

Canada Border
Services Agency

Agence des services
frontaliers du Canada



APPENDIX A - Managers' Guide to Conducting Internal Investigations

Internal Affairs Section
Corporate Security and
Internal Affairs Division
Comptrollership Branch

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PROTECTION • SERVICE • INTEGRITY

Canada

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1. FOREWORD

Canada Border Services Agency (CBSA) managers are responsible for managing CBSA programs and services in a manner consistent with public expectations regarding public funds and resources. CBSA employees must comply with the legislation and regulations administered by the CBSA, the CBSA Code of Conduct, as well as approved procedures. Management and employees have a role in the protection of public resources and funds from employee misconduct or abuse. When an incident involving an employee or allegations of misconduct are brought to management's attention, each incident must be thoroughly investigated by Internal Affairs (IA) or by local management after discussion with IA. Because incidents often affect more than one area of responsibility, a co-ordinated effort between management and IA is vital. It is in keeping with this spirit of cooperation that this guide was developed.

2. OBJECTIVE

This guide provides functional guidance to all levels of management with respect to the reporting of alleged or suspected employee misconduct to Internal Affairs; it also provides direction to managers on how to conduct fair and thorough internal investigations.

3. RESPONSIBILITIES

Directors are responsible for promptly reporting to the Manager, Internal Affairs, all allegations of employee misconduct or incidents without fail. Items to be reported are as specified in the **CBSA Security Manual, Security Volume, Chapter 27 - Internal investigations into alleged or suspected employee misconduct or any other incident which could effect the public trust in the CBSA or its working relationship with other law enforcement partners**. When apprised of an allegation of employee misconduct, the Director or his delegate will conduct a preliminary inquiry by gathering information to determine whether based upon the balance of probabilities the allegation is founded or not. If there is sufficient evidence to presume that the allegation is founded, the Director will report the matter to the Manager, Internal Affairs without delay. Following consultation the Manager, Internal Affairs will determine whether the matter would best be investigated locally or whether Internal Affairs will investigate the matter. In requesting an investigation, Directors must clearly state the purpose of any investigation and shall provide a written request, to IA accompanied by the report of the preliminary inquiry. When it has been agreed that local management is to conduct the investigation, Directors shall provide IA with a copy of the investigation report and of its conclusions.

The fact that an investigation is being conducted by others, for example, a police force, an auditor, or Investigations Division, or that criminal or civil proceedings have been instituted in no way diminishes or negates the Director's responsibility to examine any workplace-related issue and take appropriate action.

Managers are required to report to their Director any allegation of employee misconduct. When a Director delegates the responsibility of a preliminary inquiry to a manager, he or she must attempt to confirm the facts pertaining to the offence, determine the potential scope of the offence, identify all parties involved, including witnesses, obtain, review, examine, and analyse related documents, and report findings to the Director. Care must be exercised to ensure that parties involved in a potential incident are not made aware that the incident is under review.

Employees must comply with all laws and regulations administered by the CBSA, as well as the approved rules and procedures, and abide by its Code of Conduct, thereby maintaining CBSA's integrity and that of its employees. Employees must promptly report, either orally or in writing, any allegation or suspicion of misconduct by another employee to their immediate supervisor, to one of the line supervisors, or, if the circumstances warrant it, to their Director. Furthermore, employees have an obligation to attend the interview, as well as to cooperate and assist in the conduct of an investigation into an incident or allegation of employee misconduct. This includes affording complete access to the CBSA information systems, documents, and records, to the extent that such access is legally permitted.

Investigators are responsible for having a clear understanding of the mandate and purpose of the investigation, obtaining all relevant preliminary information relating to the incident or allegation, identifying written sources of information and the individuals who can supplement or corroborate the available information, planning the investigation, meeting with witnesses and gathering evidence, informing the respondent that an investigation is being conducted, interviewing the respondent, and writing a clear and comprehensive report that will allow management to make an informed decision in the matter.

The **Internal Affairs Section** is responsible for providing qualified investigators to conduct investigations, advising local management on the conduct of the preliminary inquiry, and following investigations conducted by local management.

4. DEFINITIONS

Complaint: A formal allegation of employee misconduct made to or by a CBSA manager.

Complainant: A person making an allegation of employee misconduct.

Fraud: An act whereby an employee obtains a material advantage by unfair or wrongful means.

- **Incident (examples)** Allegations of misconduct made by a member of the public or by an employee against an employee;
- Alleged or suspected employee misconduct with respect to violations of criminal laws or other laws, rules, and regulations administered by the CBSA;
- Breach of trust;
- Conflict of interest;
- Contravention of the CBSA's *Electronic Networks Policy*;
- Destruction of documents in contravention of section 67 of the *Access to Information Act*.
- Fraudulent claims regarding travel expenses, overtime and leave, including falsification of official documents, records, and medical certificates;
- Fraudulent use of the CBSA systems, such as ICES, FOSS or CPIC,
- Reduce the amount owed by a traveller, or to increase the amount of refunds or credits paid under a benefit program, to which the client is not entitled;
- Loss, theft or destruction of revenue, money, seized or abandoned goods, CBSA assets, or sensitive information;
- Participation in smuggling activities;
- Affiliation with Criminal organizations;
- Unauthorised access to and/or disclosure of confidential CBSA information.

Investigator: A duly appointed person who investigates allegations or incidents involving one or more employee.

Investigation: A systematic and thorough process involving the examination of circumstances surrounding an incident or allegation, the purpose of which is to establish and document all the relevant facts, and to analyse these in order to allow management to make an informed decision.

Misconduct: Any action whereby an employee wilfully contravenes an act, a regulation, a rule, a CBSA policy, an approved procedure, or the CBSA Code of Conduct Or participated in an activity which brings the CBSA into disrepute or effects the CBSA's interrelationship with other law enforcement organizations

Preliminary inquiry: The act of obtaining all details relating to the facts and circumstances of a reported incident, examining the documentation available in order to determine whether an allegation is substantiated, and establishing the scope of an investigation.

Respondent: An employee against whom an allegation of misconduct has been made.

Witness: An individual other than the respondent being interviewed for the purpose of obtaining information, that includes documentation, relating to a case.

5. GENERAL

A determination between the Manager, Internal Affairs and a Director, or a delegated manager, shall be made as to who will conduct the investigation into the incident, in light of the nature and seriousness of the incident. Incidents such as the theft of revenue, money, seized, detained, or abandoned goods, or CBSA assets or fraud, where it is suspected that an employee is responsible, are normally investigated by IA.

In agreement with the Manager, Internal Affairs, local management may conduct the investigation into employee misconduct; however, Internal Affairs will provide advice, follow the investigation, and receive a copy of the investigation report.

6. IMPORTANCE OF ACTING PROMPTLY

Aside from the responsibility to provide for the protection and safety of employees and to safeguard public resources, managers are also responsible for dealing effectively with allegations of employee misconduct. It is crucial that management act promptly and when informed of an incident or allegations involving an employee.

Prompt action on the part of management reduces the risk or possibility of: additional loss of public assets and/or funds; destruction of documents; and loss of confidence in accountability and the public trust. It sends a clear message to all employees that management takes allegations of misconduct involving its employees seriously; it demonstrates management's commitment to fulfilling its responsibilities and allows it to improve policies and procedures, identify training requirements, and reinforce the CBSA's commitment to making employees accountable.

7. PRINCIPLES

An investigation is a means of establishing factual and documented findings on the basis of which an informed management decision can be made. Every investigation is conducted in a rigorous and professional manner. However, the scope of investigations may vary according to the seriousness of the incident and the supporting evidence. The investigation will determine whether there is a need for policy or procedural changes, training, or disciplinary action. The investigator may contact the police if the findings reveal that the *Criminal Code of Canada* was contravened. Furthermore, delegated authority or security clearances may be suspended during an

Investigations must be objective, thorough, and conducted by a qualified person who is aware of the rights of those involved. The events and circumstances relating to an incident, both positive and negative, must be recorded and reported accurately. Investigations are to be conducted in a timely and efficient manner. These principles are vital in order to maintain the trust of employees, their representatives, management, and the public.

8. TYPES OF INVESTIGATIONS

There are usually three basic types of investigations: a preliminary inquiry, an administrative investigation, and a criminal investigation, which is normally conducted by the police agency having jurisdiction.

8.1 Preliminary inquiry

The purpose of a preliminary inquiry is to determine whether there is sufficient evidence to support the allegations made and to make a preliminary determination of the scope of the alleged offence. In short, the preliminary inquiry involves obtaining from the individual who make the allegations as many details as possible regarding the facts and circumstances reported and to examine the documentation as thoroughly as possible. The steps in a preliminary inquiry will vary according to the type of allegation made. Steps may include such activities as reviewing an Audit Trail Search report, phone records, travel expense claims, overtime and leave forms, as well as identifying all possible parties involved and all possible witnesses. Documents must be analysed in order to make a *prima facie* determination as to whether the allegation is founded. Discretion and tact are required throughout the preliminary inquiry in order to minimise stress for those involved and for other staff. It is important that documents be safeguarded in the event that an administrative or criminal investigation is warranted.

If a preliminary inquiry supports the allegation, all attempts at gathering information should be stopped immediately, and the matter should be referred to Internal Affairs. IA will then decide, with local management, if an investigation is warranted and who should conduct it.

The decision to meet with the respondent immediately after the preliminary inquiry is matter of judgement and should be discussed with IA. In some cases, allegations are the subject of criminal investigations and any disclosure of information to the respondent could compromise this investigation as well as the administrative investigation.

8.2 Administrative investigation

A preliminary inquiry may determine that the allegations raised may have some basis in fact, that the misconduct is of a serious nature, that several witnesses must be interviewed, that the allegations are of a very sensitive nature or could tarnish the CBSA's credibility in the eyes of the public. In such cases, the Director may decide that an administrative investigation is warranted and will discuss the case with Internal Affairs to determine who will conduct the investigation. If the investigation concludes that there was no employee misconduct, the respondent is to be informed accordingly in a timely fashion. If an allegation of misconduct is substantiated, management is responsible for taking the appropriate disciplinary measures.

In accordance with Treasury Board Policy, if the administrative investigation reveals that a CBSA employee has committed fraud, or any other offence or illegal act against the Crown, the matter must be referred to the police agency having jurisdiction that will determine whether the case warrants a criminal investigation. Criminal proceedings are the exclusive responsibility of authorised law-enforcement agencies. When a case is referred to the police, IA is responsible for monitoring the investigation and ensuring CBSA's interests are adequately protected.

If the CBSA Investigations Division conducts an investigation in respect of an employee suspected of violating the *Customs Act*, or the *Excise Tax Act*, management and IA are to be informed of the results of its investigation in order to determine whether an administrative investigation is warranted.

9. PRIVACY/ACCESS TO INFORMATION REQUESTS

Any Canadian citizen or permanent resident including the news media may make requests for release of information. Anyone involved in a preliminary inquiry or an investigation may obtain access to the investigation file and report under the *Access to Information Act* or the *Privacy Act*. However, requesters will only receive information to which they are entitled. Furthermore, when an administrative investigation is being conducted, only information that will not hinder the ongoing investigation will be released.

Personal information collected during an investigation may only be used for the purpose of which it is collected or for a purpose set out in the *Privacy Act*. Personal information contained in investigation files cannot, without the individual's consent, be used or disclosed except in accordance with Subsection 8 (2) of the *Privacy Act*.

The investigator must be made aware that all documentation (including tape recordings, hand-written and interview notes, documentary evidence) is subject to the *Access to Information Act* and the *Privacy Act* and that he or she is responsible for ensuring their availability should they be requested under the aforementioned legislation.

10. RETENTION OF INFORMATION

The investigator must file and retain in a secure location all files, documents, written notes, recordings, evidence, and supporting documents used during an investigation. From a legal standpoint, it is important that strict control be maintained over the storage of, and access to, this information. The items and documents gathered by the investigator to establish the facts of a case must be stored and handled in such a way as to prevent damage and to ensure that they are properly identified and can serve to subsequently prove the chain of evidence custody as required by the legislation. The date, time, and origin must be indicated on exhibits. In most cases, exhibits serve to corroborate the testimony of witnesses. The investigator must remember that the exhibits are also subject to the *Privacy Act* or the *Access to Information Act*.

Document originals must be obtained. All copies of originals will have to be certified by the investigator. Documentation gathered for an investigation must be retained in accordance with the CBSAs Disposal and Retention Schedule. The documentation must be kept for at least five years after the case is actually closed or after the date of the last document placed on the file.

11. CONDUCTING AN INVESTIGATION

It is important that all activities relating to an investigation be carried out with tact and discretion. It is equally important that employees be treated with dignity and respect and be treated fairly by the investigator. Among other things, the investigator must provide the respondent with the opportunity to respond to the allegations and to defend him or herself. The following is a suggested methodology for conducting an investigation.

11.1 Purpose of investigation

To collect all facts and evidence relating to an allegation or an incident. It is essential that the allegations be clearly and completely stated. The purpose is not to merely "*explain away*" an incident but to supply management with the information required to determine what corrective measures, if any, are to be taken. (*Administrative or disciplinary*)

11.2 Planning the investigation

Based on the stated allegations, before starting interviews, the investigator must determine what must be done in order to obtain the information that will enable him or her to fully understand the circumstances and be able to report to management (*Who, What, Where, When, Why and How*). The investigator should obtain all relevant information and documentation from the resource person, usually the person who conducted the preliminary inquiry. When planning the investigation, the investigator must determine what information is missing and where it can be obtained, and identify the individuals who can supplement this information or corroborate the information available and the relevant facts. Such individuals could include supervisors who have met with the respondent to explain the directives to follow or the code of conduct by which to abide.

The investigator must define the steps to follow for the investigation, prepare the questions to be asked during interviews, estimate the time required for each interview, and carefully determine the order in which the interviews will take place. All persons who may have relevant testimony to give must be interviewed. When it is impossible to interview someone, the investigator must note in his or her investigation report the steps taken to interview this person and the reasons why it was impossible to do so. Normally, the complainant is the first to be interviewed and the respondent is the last.

Customarily, the investigator contacts each witness the day before the interview to inform him or her of the reason for the interview, the time and place of the interview, and that her or she may be accompanied by an observer, providing the chosen observer will not be interviewed in the course of that same investigation. Witnesses should be asked to bring with them any documentary evidence they have in their possession that relates to the investigation. In exceptional circumstances individuals to be interviewed will not be contacted the day prior if to do so would negatively impact either employee safety or the investigation in question.

When planning the investigation, the investigator should therefore allow time for unforeseen delays or unplanned interviews. When such unforeseen interviews are required, it is not always possible to inform the witness one day ahead. However as much time as possible should be given in order for the witness to gather any relevant information and, if desired, obtain the services of an observer.

11.3 Location of interviews

The best location is the one where interruptions and distractions are fewest and the atmosphere encourages conversation. Whenever possible, a discreet office within a CBSA office should be used. Investigators must follow basic courtesies and show appropriate respect for the environment when interviewing a witness at his or her residence. Members of the general public should not be interviewed at work when they do not find this appropriate. Such witnesses should be interviewed in a neutral location.

11.4 Third party presence

Any person being interviewed may, if so desired, be accompanied during the interview by a person of his/her choice as long as this person is not or will not be a witness in the investigation. Allowing the presence of an observer is a privilege and should not be considered a right. The third party present during the interview is not allowed to interfere in any way with the interview process; the third party's role is limited to that of an observer.

11.5 Administrative caution

At the beginning of the interview, the investigator will remind the person to be interviewed, when the latter is not accompanied by anyone, that an observer can accompany him or her. If someone accompanies the person interviewed, the investigator will confirm that the observer is present at the request of the person to be interviewed.

All persons interviewed are to be informed:

- Of the reason for the interview;
- Of the mandate that was given to the investigator;
- That notes will be taken during the interview;
- That the person interviewed will be asked to review the investigator's notes for accuracy and, if required, corrections will be made when clarification is required;
- That the person interviewed will be asked to sign the last page and initial the others;
- That the information provided during the course of the interview may be included in the investigation report to be forwarded to the appropriate Vice President and a copy thereof to be forwarded to the Director responsible for the office where the respondent works, and may be used in a disciplinary hearing should one result;
- That the information provided during the interview will be accessible to those who are entitled to receive it under the *Access to Information Act* and the *Privacy Act* and who request it;
- That they will be asked to sign a form confirming they understand the above.

The investigator must ensure that the person being interviewed clearly understands the purpose of the meeting. The investigator will also have to answer all questions relating to the procedure to be followed.

11.6 Confidentiality

No assurances can be given to witnesses that their name and the information they provide will not be revealed to others, as CBSA administrative investigations are subject to the *Privacy Act*. Witnesses must be informed that investigators cannot conceal relevant information, including the sources that give credibility to the evidence gathered.

Personal information learned during an investigation, which does not relate to the investigation, must be discarded and never discussed with anyone during or following the investigation. The investigator must treat all witnesses; including those he or she knows well, in a professional, impartial, and impersonal manner.

11.7 Documenting interviews

The questions must be open so that the person being interviewed can give his or her version of the facts. More specific questions may also be asked in order to clarify the testimony. When the person being interviewed uses expressions such as «I believe that» or «that may be the case,» the investigator will have to clarify such statements, in order to ensure that what is being provided as fact and not impressions. The investigator should not provide his or her questions ahead of time, as they should only serve as a guide and can be changed during the interview. As needed, the investigator will have to confront the witness or the respondent with documents or other testimony previously obtained, without being threatening or intimidating. The investigator will therefore have to have the relevant documents with him or her and be ready to use them.

The investigator will take notes during the interview. It is not necessary to write down a word-for-word account, but the notes will have to accurately reflect the testimony given by those interviewed. These notes may be the only means by which the interview will be documented. Consequently, they must be dated, complete, legible, and understandable, and be placed in the investigation file.

Should the person interviewed request permission to record the interview; it is recommended that the interviewer also arrange to record the interview, while at the same time making notes of questions asked and answers provided.

The individuals interviewed will have to read the notes and attest that they constitute an accurate account of the interview. They will sign and date the document, indicating that the notes constitute a complete record of the interview. If someone refuses to sign the document, the investigator will have to sign at the end of the notes to attest that the said individual had the opportunity to review the notes and that this person was asked to sign the document but that he or she refused to comply. When requested, a copy of the signed interview notes will be forwarded to the person interviewed once the investigation is completed.

Whenever a person being interviewed provides statements pertaining to a third party, such comments will not form part of the investigation nor will they be included in the investigation report unless the third party in question has been afforded the opportunity to provide his or her response to such statements. Similarly, the report is not to reflect any comment or reference to a person or a document unless such reference is duly documented on the investigation file.

When information is obtained during a telephone conversation, the investigator must clearly note the date and time of the interview, as well as the name, title, address, and telephone number of the person interviewed. After the conversation, the investigator will read the account of the telephone conversation in order to confirm its accuracy and will then sign the pages of notes.

11.8 Information obtained from a third party

When a person being interviewed provides information obtained from a third party, such information cannot be included in the report unless the investigator can identify the third party and interview the person who is the subject of the said comments.

11.9 Refusal to cooperate

During an investigation, should an employee refuse to be interviewed or provide the information required in the investigation, the employee in question should be informed of his or her obligation to cooperate and that a refusal could result in disciplinary action by management. The investigator shall inform the employee that the relevant CBSA manager will also be informed of the refusal to cooperate and that the refusal to cooperate will be noted in the investigation report.

During the interview, the respondent may be reluctant to discuss a situation or relate the facts thereof if he or she feels that doing so may incriminate him or her. While informing the respondent that he or she is not obliged to answer the questions, the investigator must explain that, in such cases, management will nevertheless have to render a decision without the benefit of the respondent's version.

11.10 Report

The investigation report is a narrative that provides those who «need to know» or who «have a right to know» with all the information required to make a final determination. The report shall be presented in a logical, clear, and concise manner that excludes personal opinions, editorial comments, and irrelevant information. However, the investigation report must include all relevant facts, including circumstantial factors that will allow management to clearly understand all aspects of the case. **The report must be presented in the following format:**

Background: Brief summary of the events that gave rise to the investigation.

Example: On (date), XX (name and title) met with XX (name, title, office)/spoke to XX (name, title, office) on the phone and alleged that (name, title, and office of respondent) had... A preliminary inquiry conducted by (name, title, office) has determined that... In light of the foregoing, the director (name and title) has asked XX (name and title) or the Internal Affairs Division to conduct an investigation.

Purpose of the investigation: Specify what the investigation will attempt to demonstrate.

Example: Ascertain the accuracy of the allegation that... or: Determine the circumstances surrounding (description of event).

Persons interviewed: Alphabetical list of names (title and office, or home address for members of the public) of the persons interviewed.

Investigation: Testimony and evidence gathered presented in the *chronological* order in which they were obtained.

Example: When interviewed on (date) in the presence of (name of observer), XX (name, title, and office of the person interviewed) stated that:

- He/she saw...
- He/she observed that...
- One paragraph on each main point raised.

Summary: Juxtaposition of facts, testimony, and evidence, with a view to identifying flaws or weaknesses, crucial points, gaps in logic, and contradictions. All relevant information should be analysed and, as required, specific references to the documents included in the investigation file will be quoted. The ideal analysis of the facts and evidence in an investigative report should bring the reader to the same logical conclusion as that reached by the investigator.

Observation: (as required) Description of non-compliance with guidelines (state which ones); identification of shortcomings in procedures; the need to review, adjust, or develop a policy, directive, etc., mostly those national in scope.

Conclusion: Brief statement directly related to the «purpose of the investigation». It is crucial that there be a conclusion for each allegation or each incident stated in the purpose.

Example: Through the information obtained during the investigation, it was demonstrated that the allegation to the effect that (name, title) is believed to have (repeat allegation) was founded (or unfounded);

12. EXTERNAL RESOURCES

Document Examiner

An investigator who requires the services of an expert to examine documents, samples of handwriting, etc., may refer such documents to the CBSA Laboratory. Similarly, evidence gathered may be submitted to the RCMP's forensic laboratories or to the fingerprint lab for analysis and an opinion.

It is crucial that the investigator ensure that the expert witness is well acquainted with the relevant facts. Any opinion provided by an expert rests on facts, which the said expert presumes to be true. One should never draw any conclusions on the meaning of evidence until all the facts have been analysed. False premises can lead to flawed conclusions.

Such expert analysis and the resulting conclusions will be included in the investigation report, and the analysis portion of the investigation report will reflect the importance and relevance of the conclusion of such forensic analysis to the investigation and, if appropriate, will be cited in the conclusion.

13. REFERENCES

- *Access to Information Act*
- *Canadian Human Rights Act*
- *CBSA Code of Conduct*
- *Criminal Code*
- *Discipline Policy and Discipline Policy Guidelines*
- *Electronic Networks Policy Guidelines*
- *CBSA Security Manual*
- *Privacy Act*
- *Treasury Board Financial Management Manual, Chapter 4-7: Policy on losses of money and offences and other illegal acts against the Crown.*

Should you require further information, please contact the:

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Professional Standards Investigator's Manual

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1 Introduction

This manual provides functional guidance on conducting Professional Standards Investigations. It covers the basic principles and best practices for conducting such investigations and is intended to be used by Professional Standards Investigators. It should be read in conjunction with the *CBSA Policy on Internal Investigations into Alleged or Suspected Employee Misconduct and the Manager's Guide to Conducting Internal Investigations*. The scope of the manual does not include the preliminary analysis, fact finding, review for cause investigation or the discipline process. It covers the roles and responsibilities of the Professional Standards Investigator and not Security Professional Standards Analysis (SPSA), Personnel Security (PerSec), Regional Management or Labour Relations.

2 Professional Standards Investigations

Once a Professional Standards investigation has been initialed, the investigator is responsible for gathering data, evidence, facts and statements to assist in determining on the balance of probabilities whether or not misconduct has occurred. Common types of misconduct investigated by Professional Standards are listed in *Appendix A - Common Types of Misconduct*. Every investigation is conducted in a rigorous and professional manner. However, the scope of the investigation may vary according to the seriousness of the incident and the supporting evidence.

3 Procedural Fairness

Professional Standards investigations must be conducted within the framework of the legislation and applicable policies, and with consideration given to the procedural fairness requirements determined by the specific circumstances of the case.

The content of common law procedural fairness is generally divided into two separate categories. The first finds its origin in the Latin term *audi alteram partem*, meaning “**hear the other side**” or more commonly, “**the right to be heard**.” The right to be heard has been interpreted quite broadly, conferring on individuals a variety of procedural entitlements. The second element of procedural fairness is derived from the Latin term *nemo iudex in sua propria causa debet esse*, essentially meaning that **no one should be a judge in their own case**.



The following passage from the Supreme Court of Canada decision in *Baker v Canada (Minister of Citizenship and Immigration)* (July 09, 1999) sheds light on the principles of procedural fairness:

“The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions”.

3.1 Duty of Fairness

The standard of fairness applicable to administrative investigations includes the following:

- The right of persons who are the subject of the investigation to know the nature of the allegations against them;
- The right to respond to the information which the investigator will use as a basis for his or her report;
- The opportunity to make representations to the investigator;
- Fairness will also require the investigator to be free of a reasonable apprehension of bias, so the person who conducts an investigation should not have been involved in counselling any part to the same investigation;
- The investigation must be objective, thorough, and conducted by a qualified investigator who is aware of the rights of those involved. It is always preferable for the investigation process to be conducted as independently as possible in order to mitigate the appearance of conflict of interest;
- It is also important to remember that the Canadian Charter of Rights and Freedoms applies to administrative investigations.



4 Manner in Which Investigations are Conducted

The key to effective investigations is to remember that your sole purpose is to obtain information and identify relevant facts. It is not to confirm your opinions or suspicions. Therefore, the investigation must be conducted in a calm, professional, unemotional, and unbiased manner. The following points, will guide the Investigator in conducting a quality investigation:

Thoroughness

All investigations must be conducted in a diligent and complete manner, and reasonable steps should be taken to ensure pertinent issues are sufficiently resolved;

Appropriate techniques

Specific methods and techniques used in each investigation must be appropriate for the circumstances and objectives;

Impartiality

All investigations must be conducted in a fair and equitable manner, with the perseverance necessary to determine the facts;

Objectivity

Evidence must be gathered and reported in an unbiased and independent manner in an effort to determine the validity of an allegation or to resolve and issue;

Ethics

At all times, the actions of the investigation must be conducted in a manner that conforms to the generally accepted standards of conduct for government employees;

Timeliness

Investigations should be conducted and reported with due diligence and in a timely manner. This is especially critical given the impact investigations have on the lives of individuals and activities of the organization;

Accurate and Complete Documentation

The investigation report findings must be supported by documentation and evidence such as witness statements, audits, reports, etc.



5 Mistakes to Avoid When Conducting an Investigation

As an investigator, it is important to avoid the following mistakes:

- Putting your integrity in question;
- Unnecessary Delays - Delays can result in: fading memories; loss of opportunity to examine witnesses and loss of ability to obtain evidence (videos, diaries, etc.). Some delays will be unavoidable and outside the Investigator's control;
- Assuming that you already know everything;
- Failing to document what you find;
- Failing to interview key witnesses;
- Interviewing only witnesses favourable to one party;
- Not conducting a complete investigation;
- Failing to gather evidence on all the appropriate elements for specific case type. See *Appendix B Important elements of Specific Case Types* for examples;
- Conducting a biased or unfair investigation;
- Conducting result oriented investigations where the conclusions is already decided;
- Emotional involvement;
- Failing to provide the Respondent an opportunity to respond and address the allegations against them.

6 Your Responsibility as an Investigator

As an investigator, you are responsible for the following:

- Planning the investigation;
- Obtaining information and identifying relevant facts. It is not to confirm your opinions or suspicions, or to accuse anyone of misconduct. Therefore, you need to conduct investigations in a calm, professional, unemotional, and unbiased manner;
- Obtaining all relevant preliminary information relating to the incident or allegation by conducting thorough, unbiased inquiries into the facts surrounding a reported incident or allegation;
- Identifying written sources of information and individuals to supplement or corroborate information, interview the witnesses, gather evidence, interview person(s) concerned;
- Respecting the rights of individuals interviewed, maintaining confidentiality, and informing witnesses of their rights and obligations under the *Privacy Act* and *Access to Information Act*;



- Focusing on the facts. Although nothing prevents you from hearing opinions, guesses, gut feelings and the like, recognize the difference between them and hard facts. Remember that it is appropriate to take action on facts, but not on feelings or suspicions;
- In the case of an alleged or suspected criminal misconduct by the Respondent, liaising with the appropriate police agency and, if applicable, with other outside law enforcement agencies;
- Accurately reporting the findings of the administrative investigation in a clear and comprehensive report;
- Conducting a detailed analysis of the facts gathered and presenting them with the conclusions in the final report of the administrative investigation.

7 Best Practices for Investigators

All investigations must be conducted in a diligent and complete manner. The following best practices will help assist in ensuring that the investigation is conducted in a fair, efficient, and thorough manner:

7.1 Prepare Investigation Plan

- Identify the issue(s)
 - It is imperative that the investigator understand the issue or issues in question in order that he or she knows what to investigate. If the issues are unclear, the investigator may have to go back to the source (e.g. the person who requested the investigation) for further clarification;
 - When dealing with an investigation that involves complex or specialized subject matter, consider obtaining the assistance of a subject matter expert.
- Apply the law, policies and procedures
 - It is important to identify the sections of the Code of Conduct, policy or laws that are relevant to the issue being investigated.
- Determine what information is needed
 - Identify what documents or records need to be examined;
 - Determine which people need to be interviewed and in which order. When it is impossible to interview someone, the Investigator must note in the investigation report the steps taken to interview the person and the reasons why it was impossible to do so;
 - Identify other relevant documents, directives.



- Determine the order in which the information should be obtained
 - Considered whether certain documents must be examined before persons are questioned.
- Develop the questions
 - Identify what questions must be answered in order to find the facts.
- Determined the method of investigation
 - Decide on the method that would be best to obtain the information, given the circumstances of the case.

7.2 Collecting Information

7.2.1. Evidence

If relevant, collect the following forms of evidence (this list is not exhaustive):

- Video evidence;
- Internet usage reports;
- Floor access reports;
- Leave history;
- Use of electronic systems;
- Witness and respondent accounts.

7.2.2. Access to Information and Privacy (ATIP) Requests

- Remember that material related to investigations may be subject to ATIP requests;
- Remember to maintain a professional tone in correspondence.

7.2.3. Communicating in Person, by E-mail and by Telephone

- Keep information about allegations on a “need-to-know” basis;
- Ensure participants are in closed offices for sensitive phone calls;
- Ensure others cannot hear in-person conversations. If possible, use a closed office or a boardroom away from workstations if necessary;
- Use discreet titles when sending meeting requests and e-mails. Do not include Protected B information in the subject line when sending encrypted messages.



7.2.4. Storing Information

- Store physical evidence, such as paper documents and USB keys, in a locked cabinet;
- Lock your computer when you are away from your desk;
- Do not keep information on shared drives that can be accessed by others;
- Promptly transfer audio recordings from recorders to permanent storage.

7.2.5. Record Keeping

Your file should include:

- A chronology of summarized steps and action;
- Details surrounding the initial referral and decision to conduct a formal investigation;
- Evidence;
- Interview notes and audio recordings and;
- The final report.

7.3 Conduct Interviews

7.3.1. Prepare for the interview

- All interviews must be conducted in the official language preferences of the person being interviewed;
- Review all evidence;
- Identify who you will need to interview;
- Question sources or witnesses separately. Do not question two or more sources at the same time;
- Know the organizational chart so that you will understand who is involved;
- If necessary, know the layout of the workplace so that you will understand where the events in question took place;
- Identify what specific events need to be clarified in order to determine if the allegation is founded;
- Make copies of the evidence that you will be presenting to the subject being interviewed and make a note on all documents that were shared;
- Be prepared to answer questions on next steps or the process in general;



- Identify either specific questions or a list of topics you need to address during the interview.

7.3.2. Determine the order of People to be Interviewed

- As a general rule, the Respondent will usually be interviewed last. This is so that you can ask follow-up questions if you notice discrepancies between what he/she is saying and what other witnesses have said;
- In some cases (e.g. when you think you may get a confession), it may be beneficial to interview the Respondent first. Obtaining a confession at the start of the interview process may or may not allow you to focus on the root of the issue and limit the number interviews required.

7.3.3. Arrange Logistics

- Select an interview location where interruptions and distractions are fewest and the atmosphere encourages conversation. Whenever possible, use a discreet office within a CBSA office and if this is not possible, consider conducting the interview off site;
- When putting together the interview schedule, plan for unforeseen delays or unplanned interviews;
- Familiarize yourself with the location. If interviewees do not have access to the building, then make arrangements for them to be able to pass through security;
- Determine where you wish to be seated. It may be less distracting for witnesses or the person concerned if they are not facing clocks or windows.

7.3.4. Invite People to the Interview

- Customarily, the Investigator should contact each person being interviewed at least 24 hours in advance. In exceptional circumstances, the individuals to be interviewed will not be contacted before the interview if doing so would negatively impact the investigation, evidence or employee safety;
- Individuals should be notified of the following:
 - The reason for the interview;
 - The allegation(s);
 - The file number;



- The date, time and location of the interview;
- That they are required to cooperate with the investigator in accordance with the policy;
- That they are required to confirm receipt of the notification;
- That they may be accompanied by an observer at the Investigator's discretion;
- That they and their observer will not require their duty issued firearm/defensive baton/oleoresin Capsicum (OC) spray/handcuffs and therefore shall not be equipped or bring them to the interview and;
- That the interview is strictly confidential and shall be treated accordingly;
- See *Appendix C – Interview Notification* for an example template.
- It may be necessary to request that individuals bring relevant information or documentation to the interview;
- Invitations should be sent in writing and the details saved on the investigations file.

7.3.5. During the Interview

- The interview process provides the best opportunity for acquiring first-hand facts. Investigators should familiarize themselves with the conditions for a successful interview. See *Appendix D – Conditions for a Successful Interview* ;
- The Investigator should make use of various interviewing techniques. See *Appendix E – Interviewing Techniques*;
- The Investigator should start by introducing themselves;
- The Investigator is required to explain the Professional Standards Investigations mandate and process. Refer to *Annex F – Introduction to Investigation*;
- The Investigator must remain neutral in order to maximize the potential for cooperation and honesty: keep in mind that this can include your body language and your overall demeanor in the interview;
- The Investigator should avoid forming any opinion regarding the person being interviewed and instead focus on obtaining as much information and evidence as possible;
- The investigator must avoid expressing personal opinion as to how the case will or should be handled from a disciplinary perspective;
- Although the nature of the complaint may make the interview uncomfortable, the investigator must not avoid asking the questions that need to be asked. It is



important to ask pointed questions that address the elements present in the allegation;

- Do not allow interruptions during the interview (telephone calls, appointments) unless this has been agreed upon with the interviewee;
- Do not exit the interview room and leave your papers unsupervised;
- Make sure that the interview is proceeding at a pace that allows you to take accurate notes. Notes do not have to be literal;
- Ensure that the individual interviewed is provided with an opportunity to read all the notes and make amendments for clarification prior to signing them;
- Pay attention to body language. This may lead you to ask follow up questions;
- Take your time asking questions. Take a moment to review your list of questions or topics if necessary;
- Your body language and tone of voice should show that you are interested in what is being said;
- You will need to strike a balance between encouraging them to elaborate and making sure that you cover the specific points you need to clarify;
- Remain neutral if they are asking or implying that you should side with them;
- Refrain from expressing surprise, distrust, or disbelief. Maintain an image of objectivity or impartiality;
- If new information unexpectedly comes to light, be ready to adapt and pose follow up questions;
- Before ending the interview, ask the person being interviewed if they have anything to add;

7.3.6. Information Obtained from a third party

When a person being interviewed provides information obtained from a third party, such information should not be included in the report unless the investigator can identify the third party and interview the person who is subject of the said comments.

7.3.7. After the Interview

If you realize that you need to pose additional questions, you may schedule another interview.



7.4 The Investigation Report

It is imperative for the facts uncovered in an investigation to be presented in a standard form that is both sequential and thorough to the reader. The investigation report is a narrative that provides those who “need to know” or who “have a right to know” with all the information required to make a final determination. The report shall be presented in a logical, clear and concise manner that excludes personal opinions, editorial comments, and irrelevant information. However, the investigation report must include all relevant facts, including circumstantial factors that will allow management to clearly understand all aspects of the case. The following points and guidelines will assist in completing the report:

7.4.1. Investigative Report Standard

- It contains facts set forth to facilitate reader comprehension and achieves its purpose by answering the questions that were set out in the purpose of the investigation;
- It is logically organized, accurate, complete, concise, impartial and clear;
- It is designed to meet the needs of the decision-maker. It should use neutral language to demonstrate your impartiality;
- It is rigorous – the decision maker must be able to rely on the facts presented in the report and those facts must be based on the evidence in the file;
- It is structured in such a way so that information can be located easily;
- It is written in deductive prose, using overview statements and topic sentences and It should be written in short, simple and direct sentences and paragraphs;
- It is clear and the decision makers and other readers will understand it;
- It should neither raise unanswered questions nor leave matters opened to misinterpretation;
- It is concise and conveys all necessary information, but no more than is necessary without sacrificing clarity, completeness, and accuracy.

7.4.2. Report Format

The investigation report should include: a) tombstone data; b) background; c) Investigation details; d) summary and e) observations.



7.4.3. Report Practices

- A complete investigation report should answer the Five Ws: 1) what happened; 2) when did it happen; 3) where did it happen; 4) why did it happen and; 5) who was present and either observed or participated in the incident;
- When describing the Respondent's actions, it is recommended that the Writer sticks with facts and stays away from interpretations. For example, consider using:
 - Unauthorized removal instead of theft;
 - Striking/hitting instead of assault;
 - Improper claim instead of fraud;
 - Incorrect statements instead of falsification;
 - Failure to follow instead of insubordination.
- Before submitting the report to management for review, set it aside for a day or two and then read it afresh. This may give you a clearer view of where changes need to be made;
- Ask yourself if someone unfamiliar with the situation could readily understand the report;
- When re-reading the report, ensure that it is coherent, not repetitive and presents the information in the right place;
- Your analyses should clearly link your conclusions with the evidence you have gathered and the specific allegations in question;
- You will need to include a separate analysis for each allegation. If one analysis is later deemed to be flawed, then it will not affect your conclusions regarding the other allegations;
- Your conclusion should clearly state whether the allegations are founded, unfounded, or inconclusive;
- Do not recommend corrective measures. If corrective measures are necessary, management will seek guidance from Labour Relations;
- Evidence in the report must be supported by evidence/documentation in the investigation case file, and each point must contain an accurate reflection of facts.



8 Appendix A – Common Types of Misconduct

Common types of misconduct investigated by Professional Standards Investigations include (but are not limited) to the following:

Abuse of Authority	Misuse of CBSA Database
Action Contrary to CBSA	Misuse of CPIC
Assault	Misuse of Credentials
Breach of Trust	Misuse of Duty Firearm
Bribery	Misuse of FOSS
Conflict of Interest	Misuse of Govt. Property
Conspiracy	Misuse of IT Systems
Conspiring to Smuggle	Misuse of Property
Criminal Association	Misuse of Social Media
Discreditable Conduct	Neglect of Duty
Drug/Intoxicants Usage	Sexual Assault
Excessive Use of Force	Smuggling
Facilitation	Solicitation of Benefits
Falsifications – Documents	Theft of Assets
Fraud – Other	Theft of Financial Items
Fraud Against CBSA	Theft of Govt. Property
Fraud Against Govt.	Unauthorized Access



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Insubordination	Unauthorized Association
Intimidation	Unauthorized Comments
Lack of Candor	Unauthorized Disclosure
Loss of Govt. Property	Uttering Threats



9 Appendix B – Important Elements of Specific Case Types

Failure to gather evidence on all appropriate elements of the allegation(s) can impact the credibility of the investigation. The following are examples of specific case types and elements that should be addressed:

9.1 Theft

- Did the Respondent take another's property?
- Did the Respondent act without authorization?
- Did the Respondent act with intent to permanently deprive the owner of property (does the Respondent have a plausible explanation)?
- Did the Respondent act with a guilty mind?

9.2 Insubordination

- Was the Respondent given a lawful order that was within policy, guidelines and standard procedures?
- Did the employee disobey the order?
- Was the order clearly given?
- Was the Respondent given a reasonable opportunity for compliance?
- Was the disobedience willful and intentional?
- Were there circumstances beyond the employee's control (e.g. physically incapable).

9.3 Falsification

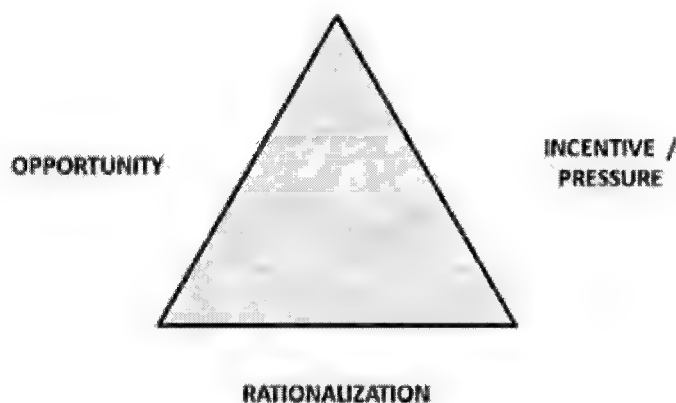
- Did the Respondent supply incorrect information?
- Was the information material?
- Was the information knowingly supplied?
- Was the information supplied with the intent to deceive (was the information provided erroneously or with negligence)?
- Is there a plausible explanation?



Note: It is recommended that Investigators familiarize themselves with the *Fraud Triangle*.

The *Fraud Triangle* is designed to explain the reasoning behind an employee's decision to commit internal fraud. The three stages, categorized by the effect on the individual, can be summarised as **Incentive / Pressure, Opportunity** and **Rationalization**.

FRAUD TRIANGLE



Incentive / Pressure: The need that an individual attempts to satisfy by committing fraud

- Expensive medical bills;
- Expensive tastes;
- Addiction problems;
- Living beyond one's means;
- High personal debt or credit;
- Substantial financial losses;
- Undue pressure to succeed;
- Greed;
- A feeling of entitlement.

Opportunity: The belief that an act of fraud can be committed and remain undetected



- Using one's position and authority as a means for engaging in fraudulent activity;
- Capitalizing on lack of monitoring/oversight;
- Using one's ability to deceive using minimal effort.

Rationalization: The ability to justify the fraudulent act

- "I do not care";
- "I am just borrowing the money";
- "Everybody does it";
- "I am not hurting anyone";
- "It is for a good cause";
- "It is not really a serious matter";
- "The organization can afford it";
- "I deserve it".

The fraud triangle originated from Donald Cressey's hypothesis:

Trusted persons become trust violators when they conceive of themselves as having a financial problem which is non-shareable, are aware this problem can be secretly resolved by violation of the position of financial trust, and are able to apply to their own conduct in that situation verbalizations which enable them to adjust their conceptions of themselves as trusted persons with their conceptions of themselves as users of the entrusted funds or property.¹

¹Donald R. Cressey, *Other People's Money* (Montclair: Patterson Smith, 1973) p. 30.

9.4 Threat

- Did the employee make certain statements?
- Did the statement(s) constitute a threat under the *reasonable person standard* based on the following:
 - Listeners reaction
 - Listeners apprehension of harm
 - Speakers intent
 - Any conditional nature of statement(s)
 - Any special circumstances



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10 Appendix C – Interview Notification

PROFESSIONAL STANDARDS INVESTIGATION NOTIFICATION RESPONDENT/COMPLAINANT

Please be advised that you have been identified as a Respondent/Complainant regarding the following Professional Standards Investigation:

Name:

PSI File #: PS

Allegation:

Accordingly, your presence is required for an interview in conjunction with this administrative investigation as follows:

Date:

Time:

Location:

You are required to cooperate with the investigator in accordance with the *Policy on Internal Investigations into Alleged or Suspected Employee Misconduct*. A copy of this policy is posted on the CBSA Intranet for your reference. You are required to reply to this e-mail immediately upon receipt, acknowledging this notification.

This interview can be conducted on a 1-on-1 basis or you may be accompanied by an observer at the Investigator's discretion, provided this person does not form any part of the investigation. The observer is not allowed to interfere in any way with the interview process; the third party's role is limited to that of an observer only. The observer must be willing to show identification. Should you choose to have an observer accompany you, you are required to provide their name to me prior to the interview. I will then advise you whether the individual can act as your observer or not.

You will not require your duty issued firearm / defensive baton / Oleoresin Capsicum (OC) spray / handcuffs; therefore, you and/or your observer shall not be equipped or bring any of these items with you to your interview. Lastly, this investigation is strictly confidential and therefore, it shall be treated accordingly.

Thank you,

Senior Investigator



11 Appendix D - Conditions for a Successful Interview

An Investigator is a neutral third party

An Investigator must set aside any bias he might have.

An Investigator keeps an open mind

An investigator must be prepared to consider and keep in mind all of the versions of the events giving rise to the allegations, regardless of how and by whom the versions are presented. At the same time, you cannot disregard how the participants give their versions because their attitudes and approaches are often reflected in their behaviour and may have a connection with the situation. Look at the facts first and then at how they are presented.

An Investigator remains calm at all times

An investigator must avoid being provoked. He or she must concentrate on obtaining all of the information that is required for a full picture of the situation under investigation. If the person questioned contradicts himself or one of the other participants, obtain clarification.

An Investigator focuses on the facts

Although nothing prevents you from hearing opinions, guesses, gut feelings, recognize the difference between them and hard facts. Remember that it is appropriate to take action on facts, but not feelings or suspicions.

An Investigator wants statements of fact rather than hearsay or opinions

This is important because the conclusions of the investigation must be based on the facts of the case. Sometimes an investigator has to assess the person's credibility, which should be based on facts and person's observable behaviour.

An Investigator shows empathy, not sympathy

Emotions such as fear and anger sometimes run high. Know how to recognize emotions, show empathy and re-establish as far as possible the person's physical and psychological comfort. If the interview cannot be continued, do not hesitate to suspend or postpone it to a later date.



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12 Appendix E - Interviewing Techniques

The investigator is required to use effective questioning techniques to confirm or clarify the facts.



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13 Appendix F - Introduction to Investigation

MANDATE: PROFESSIONAL STANDARDS INVESTIGATIONS

In accordance with CBSA's Policy on Professional Standards Investigations, Professional Standards is responsible for conducting investigations into allegations or suspicions of employee misconduct which includes violations of legislation, rules and regulations and policy administered by the Agency. Professional Standards Investigators are responsible for interviewing employees involved in the alleged misconduct or those who may have witnessed it, as well as gathering relevant documents and information, analyzing this information and determining whether allegations are founded or not.

PRIOR TO THE INTERVIEW I WAS ADVISED:

- of the reason for the interview and that the interview may be audio recorded by the Investigator;
- that I may be accompanied by an observer, provided that the observer is not to be interviewed as a witness during the course of the same investigation;
- that the investigation is administrative in nature;
- that I must turn off all electronic devices in my possession prior to the interview;
- that I am not allowed to discuss my interview or the investigation in general, with any other person;
- that in accordance with the CBSA's *Code of Conduct*, I am obliged to cooperate and assist in the conduct of this investigation;
- that facts are being gathered to establish whether a misconduct has occurred or not;
- that notes will be taken during the interview and these notes will form the basis of the investigation report;
- that I will have the opportunity to read these notes and make amendments for clarification, if required prior to signing them;
- that a copy of the investigation report will go to the appropriate Vice-President and local management officials and any information provided may be included in the investigation report and used by management in a disciplinary process;
- that individuals have a right to information about themselves, therefore, subject to the *Privacy Act*; anything said about a third party may be made available to that party if they request it under the Act;
- that any information gathered during this Investigation may be referred to the Personnel Security Screening section for their review and appropriate action under the Policy on Government Security. This information may be used for a Review for Cause investigation. This could potentially lead to the suspension or revocation of your reliability status which is a condition of employment.

Handbook on Administrative Investigations for Security Functional Specialists

TREASURY BOARD SECRETARIAT

**GOVERNMENT OF CANADA
SECURITY POLICY DIVISION
CHIEF INFORMATION OFFICER BRANCH**

MARCH 2018

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1. Purpose

This document aims to assist departmental security functional specialists in the conduct of administrative investigations into security incidents under the Policy on Government Security and related directives and standards. It provides guidance on the security investigative process, leveraging identified best practices from across the Government of Canada, and is intended to foster a transparent, fair and efficient investigative process.

As set out in the Security Organization and Administration Standard (SOAS), departments and agencies conducting administrative investigations into security incidents require operational policies that establish the conditions under which these are carried out. This document contains best practices that may assist departments and agencies in creating these operational policies.

2. Context

An administrative investigation of a security matter seeks to establish and evaluate the facts surrounding an incident or allegation, creating a basis on which an informed decision can be made.

The Policy on Government Security requires that departments and agencies ensure that when significant issues arise regarding policy compliance, allegations of misconduct, suspected criminal activity, security incidents, or workplace violence they are investigated, acted on and reported to the appropriate law enforcement authority or lead security agency.

The Directive on Departmental Security Management requires that:

- Investigations are conducted in a manner that does not jeopardize or compromise evidence, the rights of individuals or civil or criminal proceedings.
- Procedures are developed and implemented to establish the conditions under which each administrative investigation will be conducted.
- Incidents suspected of constituting criminal offences are reported to the appropriate law enforcement authority and protocols are established to ensure cooperation between the department and law enforcement agencies.
- Individuals involved in the investigation are appropriately informed of their rights and obligations.

The SOAS requires that:

- Departments conducting security inspections and investigations must have operational policies that establish the conditions under which these will be carried out.
- Policies should require that security breaches and violations be reported promptly and procedures should explain how and to whom such reports should be made.
- Employees should also be informed of the reasons for inspection and investigation policies and procedures and their cooperation in implementing them should be encouraged.
- Departmental inspection and investigation policies should be reviewed by departmental legal services before implementation.

3.Roles and Responsibilities

3.1 Departmental Security Officers (DSO)

The Departmental Security Officer (DSO), through a Deputy Head-delegated authority under the Policy on Government Security, is responsible for:

- Establishing and overseeing the implementation and periodic review of administrative investigation procedures and practices, and, when appropriate, ensuring coordination among all affected groups within the department (e.g., Labour Relations, Privacy, Legal Services);
- Ensuring that procedures are developed and implemented to establish the conditions under which administrative investigations will be conducted, and that the continuity of facts and evidence will be preserved;
- Ensuring that, as required, security incidents are reported to the deputy head and/or appropriate law enforcement authority and/or Government of Canada Lead Security Agency;
- Ensuring that the investigation is conducted in a timely manner, in accordance with the principles of procedural fairness and that any individuals, against whom allegations have been made, are advised that they will be the subject of an administrative investigation;
- Developing the Terms of Reference of the investigation;
- Reviewing the investigation report and findings, and if the allegation(s) are founded, determining what administrative measures, if any, are warranted;
- Consulting with Labour Relations, as well as the Centre for Labour Employment Law (CLEL), and the Chief Information Officer Branch policy centre at Treasury Board of Canada Secretariat (TBS) when appropriate;
- Providing the final report to the organization's Access to Information and Privacy Office for appropriate redactions in preparation for sharing with the subject of the investigation;

- Making information relating to the investigation available in accordance with the need to know principle;

3.2 Investigators (internal or contracted)

Investigators are responsible for:

- Developing the investigation plan;
- Adhering to the Terms of Reference of the investigation;
- Reporting any actual or perceived security risk and/or criminal offence to the DSO (or delegated authority).
- In consultation with management, informing all individuals involved in the investigation of their rights and obligations;
- Obtaining and documenting all relevant facts relating to the security incident or allegation by conducting thorough, unbiased inquiries into all written, corroborating or other evidence;
- Interviewing individual(s), in the official language of their choice;
- Maintaining the chain of custody for all evidence;
- Taking all reasonable and necessary measures to protect the confidentiality of information gathered during the investigation;
- Providing the DSO (or delegated authority) with periodic verbal or written progress reports;
- Accurately documenting the facts in a clear, comprehensive investigation report that will allow the DSO (or delegated authority) to make an informed decision on the outcome of the investigation;
- Conducting administrative investigations in a timely and impartial manner and in accordance with the principles of procedural fairness.

3.3 Labour Relations Advisors

Labour Relations Advisors are responsible for:

- Issuing guidance on the application of Labour Relations legislative and policy requirements;
- Providing assistance, advice and sharing information to help determine whether an incident is of an employment-related nature more appropriately dealt with through the disciplinary process or security, or both;
- Providing advice to the DSO (or delegated authority) on the scope of Labour Relations responsibilities during the preliminary fact finding stage and throughout the administrative investigation;

- Providing advice on courses of action, including, but not limited to, the reassignment of an employee or suspension without pay pending the investigation, to ensure that labour relations obligations are considered;
- Providing recommendations on disciplinary actions to be taken, when applicable, regarding appropriate preventative measures and on reintegration of an individual subject to allegations, into the workplace;
- Liaison with the bargaining agent;
- In addition, during an administrative investigation into misconduct, informing the DSO (or delegated authority) of any security aspects.

3.4 Centre for Labour and Employment Law

Centre for Labour and Employment Law (CLEL) is responsible for:

- Providing legal advice during the administrative investigation on the legal implications, procedural fairness, protection of evidence and, in consultation with Labour Relations, appropriate measures to be applied; and
- Providing advice on any security administrative action.

3.5 Access to Information and Privacy Officials

Access to Information and Privacy Officials are responsible for:

- Providing guidance on the *Access to Information Act*, the *Privacy Act*, and other legislation as applicable;
- Reviewing the investigation report, when appropriate, and providing guidance on the disclosure of information pertaining to the administrative investigation.

3.6 Supervisors

Supervisors are responsible for:

- Ensuring that individuals that they supervise are aware of their ongoing security responsibilities;
- Cooperating in the investigative process if called upon to do so;
- Disclosing information relating to the investigation in accordance with the need-to know principle;
- Monitoring for changes in group dynamics during an investigation and/or negative impacts on the team and acting accordingly;
- Reporting any allegations of suspected criminal activity, security incidents or related concerns to the DSO (or delegated authority) without undue delay.

3.7 Employees

Employees are responsible for:

- Performing their duties reliably and in compliance with the security status or clearance they are granted, the security obligations detailed on the security briefing form, and departmental security procedures;
- Reporting security incidents through the appropriate channels;
- Immediately notifying the DSO (or delegated authority) of any persistent or unusual contact, and of any attempt by another individual to solicit or obtain access to sensitive information, assets or facility without proper authorization, or any unusual behaviour of individuals that may present a security risk to the department or government as a whole;
- During an administrative investigation, accurately and truthfully providing the personal information and evidentiary documents required for the investigation in accordance with the required format and established timeframes.

4. Phases of an Administrative Investigation

4.1 Initiation Phase - Preliminary Fact Finding and Triage

The trigger event for a security action can be either adverse information being received, or, the occurrence of a security incident. When confronted with an allegation or possibility of a security incident, and once any immediate risks or hazards have been addressed, the DSO (or delegated authority) will take immediate action to assess if enough information is available to determine that the allegation has merit that the incident occurred, or whether preliminary fact finding is required. Preliminary fact finding is the first step on the administrative investigation continuum and needs to be undertaken as quickly as possible.

Labour Relations should be advised of alleged security incidents as the incident may have implications for both Security and Labour Relations. When in doubt as to the nature of the allegation, the preliminary fact finding may be conducted in consultation with Labour Relations.

An administrative investigation will generally be required if the preliminary fact finding does not provide enough information upon which to base a determination of the events.

4.2 Preparation Phase

4.2.1 Selecting an Investigator

An investigator is normally appointed by the DSO (or delegated authority) from within the department. At times, it may be necessary to obtain an investigator from outside the federal public service. In determining whether it would be appropriate to use the services of an external investigator, the DSO (or delegated authority) should consider the following factors:

- Availability of internal investigators
- Real or perceived objectivity
- Knowledge of relevant legislation, policies and procedures
- The predicted length and complexity of the investigation and the organization's ability to use an internal resource for a lengthy period of time
- Experience and training
- Requirement for specialized knowledge
- Cost
- Timeliness and degree of urgency
- Level of security screening required.

4.2.2 Developing Terms of Reference (Mandate)

The Terms of Reference (also known as mandate) establishes the parameters for the investigation and management's and the investigator's responsibility for informing individuals of their rights and obligations. The Terms of Reference would include elements such as:

- The nature of the security incident or allegation
- Purpose of the investigation
- The name of the individual or individuals involved in the alleged security incident
- Name of investigator or investigating team

The Terms of Reference should be approved by the DSO or senior manager responsible for the individual and provided to the investigator. It will also be provided to the individual under investigation, upon request, once it has been determined that doing so will not compromise the investigation (i.e. destruction of evidence). The investigator is expected to apply the principles of procedural fairness and to adhere to the assigned Terms of Reference.

Any issues that arise in the course of the investigation that fall outside of the Terms of Reference should be brought to the attention of the DSO (or delegated

authority). The Terms of Reference may be amended accordingly or a separate investigation may be initiated. (Appendix C Sample Terms of Reference Mandate)

4.2.3 Identifying Investigative Tools and Techniques

To gather all relevant facts and information, the investigator or investigation team, while taking into account privacy considerations, may employ various investigative tools and techniques including:

- Interviews and/or written statements from those involved (e.g., the individual(s) under investigation, witnesses, clients, other third parties);
- Having the interviewee review and sign the investigator's notes for the interview to ensure accuracy in cases where the interview is not recorded;
- Review of tools, systems, audit logs and databases used to monitor departmental premises, assets and information systems;
- Review of relevant files, electronic media, telecommunication records etc.; and
- Engaging experts for support when specialized skills are required (e.g., for forensic examination of hardware, equipment, files and contracts).

4.2.4 Planning and Analysis

In addition to the Terms of Reference, the investigator should develop a more detailed investigative plan, which elaborates the information provided in the Terms of Reference. The investigator needs to determine what evidence, if any, is missing and where it may be obtained, and which additional witnesses may be needed to corroborate the information and additional facts.

The investigator would include a list of potential witnesses, what questions they will be asked, and in which order the witnesses are to be interviewed. Individuals that may be called for an interview include: the individual under investigation, the individual that reported the security incident, and individuals with knowledge of the incident or allegation. Consideration needs to be given to the timing of the security incident and whether there are former employees or other individuals who are not employees (e.g., suppliers, other government employees or clients) who may have knowledge relevant to the investigation.

Establishing facts is contingent upon obtaining responses to six key questions: Who? What? Where? When? Why? How? So that the investigator is best positioned to answer those questions, they need to be included in the investigative plan and used to guide and simplify the interview process. In doing so, it is important to determine beforehand:

- The date, time and place for the interviews;
- The order in which the individuals(s) under investigation and witnesses will be questioned;
- The questions the investigator will ask them for each interview; and
- How much time the investigator intends to allow for each interview so that they can prepare a schedule accordingly.

It is important to keep in mind that the plan needs to be flexible and the investigator needs to be able to adapt the line of questioning or approach as the interview unfolds. Should the investigator receive conflicting information, which is relevant to the conclusion, the investigator may need to re-conduct certain interviews in order to assess the credibility or seek clarification.

4.3 Implementation Phase

4.3.1 Informing the Individual

When it is determined that an administrative investigation is required, and its disclosure will not compromise the investigation, the individual(s) must be informed in writing of the investigation; the nature of the allegation(s); that administrative and/or disciplinary action, up to and including termination, may be taken where relevant, and that this may impact their ability to retain their security screening status. The individual must be made aware that incidents suspected of constituting criminal offences will be reported to the appropriate law enforcement authority. Depending on departmental practice, either a senior official (i.e. DGlevel) of the individual(s) under investigation, or the DSO (or delegated authority) should sign and ensure that the letter to the individual(s) is delivered appropriately. (See Appendix B Sample Letter Informing of an Administrative Investigation)

If the individual is on certified leave, security officials need to consult with Labour Relations to determine the best way to communicate with the individual. Labour Relations normally has an established protocol which can be leveraged to ensure any communication is conducted in an appropriate manner respectful of the individual's circumstances. An individual on leave may not be able to participate in the investigation process. In this case, the DSO (or delegated authority) in consultation with management and labour relations, will need to determine if the investigation should be suspended pending the individual's return to work, and ensure that all correspondence and decisions are documented accordingly.

4.3.2 Suspension Pending an Investigation

The DSO (or delegated authority) in collaboration with the individual's manager, should assess the risk of leaving an individual in their position while an administrative investigation is ongoing. There may be situations that warrant temporarily removing an individual from the workplace to ensure departmental assets and/or employees are protected from risk of further exploitation or injury, to ensure an effective and efficient investigation, or where alternative options such as closer supervision, telework or re-assignment are not feasible.

It is important to ensure that the individual's access to departmental facilities, information, assets and information management/information technology systems are reviewed and adjusted appropriately in a timely manner.

Consult Appendix D, Section 16 of the Standard on Security Screening for information related to the suspension of a security status or clearance.

4.3.3 Conducting Interviews

Interviews are normally conducted in person, but may be conducted by videoconference, or, on rare occasions, by phone, providing that the individual's identity can be confirmed. As a best practice, the investigator should confirm to the individual the format of the interview in advance. The interview should take place in a private area and not in the vicinity of the individual's work area.

The investigator will ensure that the interviewee is able to participate in the official language of their choice. The individual should be provided with the opportunity to be accompanied by someone, such as a union representative, legal counsel (at their expense) or anyone else of their choosing, providing they are not party to the process. The individual should be made aware that they are to respond to the questions directly, not through the person accompanying them. The person accompanying them must respect the process and may be asked to leave if they disrupt the interview.

Individuals called for an interview and, in particular, the person alleged to have committed the security incident should be informed of:

- Expectations in terms of cooperation;
- The reasons for which they are being interviewed;
- The need for the investigator to ascertain all relevant facts;
- The potential outcomes/consequences of the administrative investigation; and
- Their rights and obligations.

Interviews need to be conducted in a respectful and professional manner. Care should be taken to avoid any comments or behaviours that could intimidate or be

perceived as badgering or threatening. In certain situations, an individual subject to an allegation may not want to engage in discussion.. If individuals decide not to answer a question, they should be informed that the DSO (or delegated authority) may have to make a decision based on available information, without the individual's input. The investigator should note the question as well as the individual's refusal to answer.

All statements from witnesses and individuals, as well as meetings and interviews should be documented. The use of recording devices during interviews is permitted providing the individual being interviewed provides consent prior to commencing, in writing or verbally. If the individual objects to the use of a recording device, the investigator should inform the individual that the investigator's written notes will become the official record for the interview.

At the beginning of the interview, the investigator would explain how the interview will be conducted and what is expected from the interviewee. The investigator would also verify that the individual clearly understands the purpose of the interview and remind the interviewee of their rights and responsibilities and ensure that they are understood. At this point, it is advisable to allow the person to ask questions they might have and to remind the individual that the confidentiality of statements cannot be guaranteed as information is subject to the *Privacy Act* and/or *Access to Information Act* and/or its disclosure might be otherwise required by law.

4.3.4 Analyzing the Facts

4.3.4.1 Create a Chronological Description of Key Evidence

A chronological description will help establish the sequence of events related to the allegations and can be a useful tool for preparing the analysis. The information should be organized in chronological order according to the allegations and the evidence that either supports or refutes these allegations.

Once completed, the description should be reviewed to identify any gaps or inaccuracies which may require further investigation.

4.3.4.2 Compare Similarities and Differences

All statements made by interviewees need to be compared to identify similarities (those accounts which are strikingly similar) and differences (those accounts which highlight discrepancies).

The investigator will need to gain a clear understanding of the facts, based on the evidence compiled. To do this, the investigator will compare the statements provided by the individual(s) under investigation and the witnesses to discern similarities and differences.

While the various statements of the alleged incident(s) may have certain similarities, it is equally possible for the perceptions of those involved to vary considerably. If there are important differences in facts, the investigator should weigh them according to the validity or strength of the information (e.g., direct, firsthand evidence vs. hearsay, personal perceptions) and the credibility of the witnesses. If the statements of the individual(s) under investigation are in conflict, the investigator should review the witnesses' versions to determine whether they serve to support or refute the individual's statement and to what extent. For example, if the majority of the witnesses interviewed support the allegations, the investigator may reasonably conclude that the allegations are founded. However, the number of witnesses that support a version of events should not be the only consideration. The investigator would also consider whether their statements are credible and whether there is other supporting evidence.

4.3.4.3 Weigh the Information

Once all of the information is collected, it should be weighed against the following considerations:

- What is the relevance of the fact to the allegation?
- How important is the evidence?
- Does it substantiate or disprove the allegation?
- If the evidence is not directly related to the allegation, does it reveal other important information or lead to another source?
- Are there gaps or inaccuracies that require further investigation?

It is important to note that while evidence may not appear to be relevant at the time that it is provided to the investigator, it may gain importance at a later stage in the investigation.

In determining the accuracy of evidence provided, the investigator should identify whether there is conflicting information and seek additional sources to establish whether the evidence is valid. The investigator will need to reconcile the data, while also taking into consideration the fact that it is natural for witnesses to observe and remember situations differently given the subjectivity of the perceptions of each individual. The more time that elapses, the more difficult it may be for people to recollect events clearly.

In determining the credibility of the information from a witness, the investigator should consider whether the witness has provided direct or first-hand knowledge of the incident(s) or whether the witness is providing a personal opinion or repeating hearsay. Other considerations could include, for example, the demeanor and manner of the witness during the interview, the capacity of the witness to recollect any matter and the existence or nonexistence of a bias or motive. A

credible witness is one that is believed to be telling the truth without any attempt to hide or exaggerate the facts, in a straightforward manner.

In examining the facts, the investigator needs to examine each piece of information individually and then as a whole. Information that could be considered weak if viewed on its own might be strengthened by supporting evidence. On the other hand, evidence that appears strong initially can be weakened by the provision of contradictory evidence.

Even if the body of information contains significant contradictions or if there is a lack of convincing evidence, the investigator is still required to draw a conclusion. In order to determine that the allegation is founded, the evidence must demonstrate on a balance of probability that the allegation is likely to have occurred. The investigator need not be convinced beyond a reasonable doubt, as in criminal cases. What is necessary is that one side's case appears more probable than not. In the absence of such evidence, the investigator must conclude that the allegation is not founded. Drawing such conclusions can be especially challenging in situations where two people present different versions of incidents.

However, two conflicting views should not necessarily lead the investigator to conclude that the allegations are not founded. Rather, each account should be carefully assessed in light of all of the other information and evidence collected. The number of witnesses who can support a version of events should not be the only consideration. At times, fewer strong pieces of information may outweigh a larger number of weaker pieces of information. The investigator must be able to account for and explain the different weight allotted to the evidence collected.

Furthermore, when analyzing the evidence the investigator would avoid trying to read into the motives of the person against whom the allegations are made.

4.3.5 Identify Areas that Require Further Inquiry

The investigator should ensure that the information required under the Terms of Reference has been collected, including information to support or refute each individual allegation. In the absence of this, the investigator will need to determine the reason for the lack of information (e.g., lack of sources, limited scope of questioning or witnesses, poor understanding of the issues or allegations).

4.4 Reporting Phase

4.4.1 Developing the Draft Investigation Report

Once the appropriate interviews have been conducted and the relevant information reviewed, the investigator should develop the draft or preliminary investigation report in a timely manner. The investigation report should provide the

details of the facts gathered during the investigation process and interviews. It should be appropriately detailed, concise, chronologically ordered and accurate. If information is provided which has no relevance to the investigation, it should not be retained (e.g., the report should not include unsubstantiated opinions, moral judgments).

The essential components of an investigation report are: background information, allegation(s), findings of facts related to the Terms of Reference, analysis, considerations including mitigating factors and conclusion(s). (See Appendix D Sample Investigation Report)

The investigation report is not to provide recommendations on administrative and/or disciplinary measures. The investigation report may include recommendations that pertain to the improvement of current security practices or procedures within the department to minimize the likelihood of such incidents occurring in the future.

The preliminary investigation report is submitted to the DSO (or delegated authority) for review. Before any copy is released to the individual, it is recommended that the report be reviewed by CLEL as well as an Access to Information and Privacy (ATIP) coordinator, to ensure compliance with relevant legislation (Appendix A Checklist for Releasing the Draft Investigation Report)

The preliminary investigation report may also be communicated to other relevant groups in the department depending on the nature of the case and in accordance with the 'need to know' principle (e.g., Labour Relations, CLEL / Legal Services), while taking into consideration the need to manage the process in a timely manner.

4.5 Individual's Right to Respond

The individual that is the subject of the investigation has the right to review the information that will form the basis of decision making. The draft investigation report is generally shared with the individual for feedback. The individual needs to be given a reasonable amount of time to provide comments on any factual errors or omissions in the investigation report. The individual should have the opportunity to submit a written response within a specified timeframe (usually 10 business days, barring any extenuating circumstances).

Any relevant information that the individual provides in response to the review of the preliminary investigation report should be reviewed, analyzed and included, as appropriate, in the final investigation report.

4.6 Conclusion of the Investigation

Once the final investigation report has been completed, it is provided to the senior official mandating the investigation and a determination needs to be made as to whether the allegations are unfounded or founded.

4.6.1 Unfounded Allegations

The individual should be informed in writing of the findings in a timely manner and they may be provided with an ATIP-reviewed copy of the final investigation report. In cases where an employee was suspended without pay and the allegation is deemed unfounded, the senior official mandating the investigation (i.e. senior manager responsible for the individual) or DSO (or delegated authority) will inform Labour Relations so that immediate and appropriate action can be taken.

4.6.2 Founded Allegations

In cases where the allegations are founded, the individual's manager has the responsibility to take appropriate action in a timely manner. It is recommended that the DSO, or delegated authority, consult with management and Labour Relations to determine the most appropriate course of action based on the conclusions of the investigation report. In cases where disciplinary measures are required, the matter is turned over to management and Labour Relations for action. At the same time, in accordance with the Standard on Security Screening, the DSO may direct that a Review for Cause be initiated to resolve doubt associated with the security level of the individual as appropriate. In cases where it is suspected that a criminal offence has taken place, the appropriate law enforcement authority will be notified.

5. Retention and Storage of Investigation Information

5.1 Information Management

Security personnel are to ensure proper control of investigation reports. In some cases, security considerations will require restricted access to documentation and reports and should only be shared with appropriate individuals on a strict need to know basis.

All documents, whether electronic or hard copy, investigator's notes, reports, and supporting material of any type that were collected or prepared during the course of an investigation, constitute a Record as defined in Section 3 of the *Access to Information Act*.

Such records are to be safeguarded and retained as an integral part of the investigation file in accordance with the retention and disposal schedules of

Library and Archives Canada, the provisions of the *Access to Information Act*, and the *Privacy Act*.

Regulation 4 (1)(a) of the Privacy Regulations specifically states that personal information concerning an individual that has been used by a government institution for an administrative purpose shall be retained for at least two years following the last time such information was used. The term "Administrative Purpose" is defined in Section 3 of the definition section of the *Privacy Act* as 'the use of that information in a decision making process that directly affects that individual'.

5.2 Security File

In accordance with Section 9, Appendix C of the *Standard on Security Screening*, the DSO (or delegated authority) should ensure that any relevant information or decisions related to an administrative investigation are recorded in the individual's security file. The investigation report itself, and related artifacts, do not need to be included in the individual's security file, and would not normally be shared with another department as part of a security file transfer.

6. Privacy/Confidentiality

6.1 Access to Information and Privacy (ATIP)

In managing an investigation, the DSO, or delegated authority, and the investigator should ensure that the disclosure of information and the information gathered as part of the investigation process is accessed and safeguarded according to all relevant Acts and Policies of the Government of Canada including the *Access to Information Act*, *Privacy Act* and *Policy on Government Security*.

Furthermore, the collection, use and disclosure of personal information in the case of an investigation should be done according to relevant sections of the *Privacy Act* and *Access to Information Act*. Disclosure of information should be handled specifically according to sections 8(1) and 8(2) of the Privacy Act, which deal with disclosure of personal information under the control of a government institution. The DSO, or delegated authority, is encouraged to seek advice and expertise from the departmental/ agency Privacy and Access to Information coordinator.

6.2 Personal Information Banks

In managing personal information collected within the context of an administrative investigation, the Standard Personal Information Banks should be consulted, including but not limited to:

- PSU917 - Personnel Security Screening

- PSU 939 - Security Incidents and Privacy Breaches
- PSU 907 - Security Video Surveillance and Temporary Visitor Access Control Logs and Access Badges

7. References

Financial Administration Act

Access to Information Act and Privacy Acts

Canadian Human Rights Act

Federal Public Sector Labour Relations Act

Policy on Government Security Standard

on Security Screening

Policy on Information Management

Values and Ethics Code for the Public Sector

Canada School of Public Service

Appendix A. Checklist for Releasing the Draft Investigation Report

Upon receiving the investigation report and before releasing it to the subject of the investigation, the DSO, or delegated authority, should ensure that the following elements are present:

- The requirements of the Terms of Reference have been fulfilled.
- The investigator conducted the investigation in an impartial manner and did not exhibit prejudice toward any individuals involved in investigative process.
- Any incidents suspected of constituting criminal offences were reported to the appropriate law enforcement authority.
- The language used is impartial and unbiased and that the investigation report does not include moral judgments or unsubstantiated facts.
- The methods used to gather facts and the presentation of the facts are sound.
- The key witnesses were identified and interviewed.
- All relevant documents and policies were examined.
- The key investigative issues have been thoroughly explored (i.e. who, what, where, when, why, how) and responded to concisely, without a complete retelling of the investigation.
- The investigator properly identified gaps and challenged inconsistencies in evidence.
- The analysis and findings are logical and only include information that directly relates to the allegations.
- The balance of probability is sufficient to conclude that an allegation or security incident was more likely or less likely to have occurred (i.e. based on the balance of probability).
- The analysis and findings are based on the facts which have been disclosed to the individual(s) under investigation.
- Spelling and grammar are correct, there are no critical inaccuracies (e.g., names of witnesses, dates, locations, terminology) and that it is made available in the official language chosen by the individual under investigation.

- The investigation report is well organized (e.g., evidence, analysis, recommendations, and conclusion).
- The investigation report meets the requirements of the applicable access to information and privacy laws.

If any of these elements are in doubt, the DSO (or delegated authority) should contact the investigator to discuss and any shortcomings would need to be rectified.

Appendix B. Sample Letter Informing of an Administrative Investigation

Date

Address

This letter is to advise you that an administrative investigation will be [is being] conducted in the X Branch, Y unit, regarding (specific allegation).

Before any conclusion is made with respect to the findings of the investigation, you will be provided with information on the nature of the investigation and a summary of evidence found. You will be given an opportunity to present information that you feel has not been addressed in the course of the investigation.

Should it be determined that the allegation(s) against you (is/are) founded, administrative and/or disciplinary action, up to and including termination, may be taken. Any incidents suspected of constituting criminal offences will be reported to the appropriate law enforcement authority.

You are encouraged to cooperate fully in the process.

If you have any questions, please contact.....

Please note that the Employee Assistance Program is available to assist you at any time. They can be reached at XXX-XXX-XXXX.

Respectfully,

Date

Signature

Appendix C. Sample Terms of Reference (Mandate)

1. To conduct an administrative investigation into allegation/security incident of:

2. The investigation will be carried out by: _____

3. The issues to be investigated are the following:
 - a.
 - b.
 - c.
4. The purpose of the investigation is to determine all relevant facts relating to the security incident and to establish a factual account, upon which decisions can be made.
5. The investigator(s) will ensure that:
 - a. The investigation, to the extent possible, will be carried out in a confidential manner; that only those individuals with a clear need to know will be informed of the allegations; that the investigation will ensure the rights of procedural fairness are accorded to the respondent before any decision is made as a result of the allegations or investigation; and that interviews and correspondence will be conducted in the official language of the individual's choice.
 - b. Each individual interviewed will be offered the opportunity to be accompanied by a person of their choice; their rights and obligations under the Privacy Act and the Access to Information Act will be explained;
 - c. The employee against whom the allegations are made will be provided with an opportunity to respond to the allegations.
6. Prior to any decision by senior management, a copy of the final investigative report will be provided to the individual, respecting the *Privacy Act* and the *Access to Information Act*.
7. The undersigned are in agreement with these Terms of Reference.

Senior Designated Manager: _____

Investigator: _____

Appendix D. Sample Investigation Report

Subject:

Date:

File Number:

INTRODUCTION

Purpose of investigation: ie An Administrative Investigation was conducted into the alleged

Authorities: The investigation was conducted in accordance with the *Financial Administration Act*, the *TBS Policy on Government Security* and the DEPARTMENTAL POLICY INSTRUMENT.

Terms of Reference: The investigator was _____, title.

Terms of Reference for the investigation issued on _____. The investigation aimed to:

- a. Identify...
- b. Determine...

SUMMARY OF FINDINGS

This section should only include statements of facts and evidence. It is about the incident or events, not the investigation. The best sequence is usually chronological, i.e. tell the story and how it unfolded.

Always be clear about dates, and who did what, where and how.

Do not include investigative detail such as when you notified, exchanged emails, interviewed witnesses etc. This may be included in an Annex.

CONCLUSION

This section should answer the key questions posed in the Terms of Reference in a clear and concise manner. A conclusion is stated as a fact when there is near complete certainty, verified by documented evidence and mentioned in the Summary of Findings.

Appendix E. Definitions

Compromise: A breach of government security. Includes but is not limited to:

- unauthorized access to, disclosure, modification, use, interruption, removal, or destruction of sensitive information or assets, causing a loss of confidentiality, integrity, availability or value;
- any action, conduct, threat or gesture of a person toward an employee in the workplace or an individual within federal facilities that caused harm or injury to that employee or individual; and
- an event causing a loss of integrity or availability of government services or activities.

Preliminary Fact-Finding: the process of obtaining all details relating to the facts and circumstances reported, examining the documentation available in order to determine whether the allegation is substantiated, whether an investigation is warranted, and establishing the scope of the investigation.

Need to know: A criterion used by the custodian(s) of sensitive information, assets or facilities to establish, prior to disclosure or providing access, that the intended recipient must have access to perform his or her official duties.

Rules of Procedural Fairness: The duty to inform an individual of an allegation made against them, to afford them a fair opportunity to respond to an allegation and to know the consequences of an unfavourable decision.

Security incident: Any event (or collection of events), act, omission or situation that has resulted in a compromise.

Witness: a person who can contribute information relating to an event. This individual may be interviewed in order to obtain information, including documentation, related to the security incident or allegation of misconduct.

Investigator expectations

#1 Investigations

Beginning of the Performance Management Cycle

Departmental Priorities or Ongoing Program Delivery /Operational Activities

Delivery of Administrative Investigations.

Employee Work Objectives

Conduct and deliver Professional Standards Investigations (PSI) as assigned by the Manager of PSI in accordance with and respecting legislation, policy and procedures in order to support findings / decisions. Ensure each investigation has a mandate, investigational plan and that high quality investigative reports are prepared in a timely fashion.

You will know you have met this objective when the Manager of PSI has signed off / approved your investigative mandate, plan and final report.

It is understood by the Manager that the Investigator does not have complete control over the timing of the Investigation. It is expected that Investigators complete the investigation and report in a timely manner.

Performance Indicator or Standard

Mid-Year Review

- ☐ On track to meet expectations
- ☐ Performance results to date indicate need for improvement
- ☐ Work objective no longer required
- ☐ N/A

Year-End Assessment Results Achieved

Manager/supervisor:

#2 IAPRO

Beginning of the Performance Management Cycle

Departmental Priorities or Ongoing Program Delivery /Operational Activities

Contribute to effective / efficient program management in compliance with legislation, policies and procedures.

Employee Work Objectives

In compliance with Privacy and Access to Information requirements, investigators are to provide all relevant information regarding their investigations onto IAPRO immediately upon completion of the investigation. This would also enable proper accessibility for possible disclosure to Crown requests. This also includes closing of all files upon completion.

You will know you have met this objective when you have advised the Manager of PSI that the investigative information has been uploaded onto IAPRO and the Manager confirmed same.

Performance Indicator or Standard

see above

Mid-Year Review

- ☐ On track to meet expectations
- ☐ Performance results to date indicate need for improvement
- ☐ Work objective no longer required
- ☐ N/A

Year-End Assessment Results Achieved

Manager/supervisor:

#3 Future of PSI

Beginning of the Performance Management Cycle

Departmental Priorities or Ongoing Program Delivery /Operational Activities

Provide support and guidance regarding the activities of the unit.

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Employee Work Objectives

Investigators will maintain effective relationships with clients, partners and stakeholders ensuring all are treated with respect, integrity and professionalism. You are to contribute to the development of the program awareness, procedures, tools and communication products as well as provide guidance and mentorship to newly arrived investigators within the unit. This will ensure consistency of investigations and effective service delivery. You will also when called upon provide clear concise advice, guidance, expertise and recommendations to colleagues, and Senior Management regarding investigations, process, procedures and or policy development.

This is an ongoing activity and you will have met this objective / activity when the Manager PSI has provided you with feedback on the activity.

Performance Indicator or Standard

see above

WORK DESCRIPTION - DESCRIPTION DE TRAVAIL

Position Number - Numéro du poste	Position Title — Titre du poste Senior Investigator
Position Classification — Classification du poste AS-06	National Occupation Code — Code national des professions 6465
Department/Agency — Ministère/organisme Canada Border Services Agency	Effective Date — Date d'entrée en vigueur
Organizational Component — Composante organisationnelle Comptrollership Branch Security and Professional Standards Directorate Personnel Security and Professional Standards Division	
Geographic Location — Lieu géographique National Capital Region	Job/Generic Number — Numéro d'emploi / de générique ASC445 / 20014028
Supervisor Position Number — Numéro du poste du surveillant	Supervisor Position Title — Titre du poste du surveillant Manager, Professional Standards Investigations
Supervisor Position Classification — Classification du poste du surveillant AS-07	
Language Requirements — Exigences linguistiques	Linguistic Profile — Profil linguistique
Communication Requirements — Exigences en matière de communication	
Office Code — Code de bureau	Security Requirements — Exigences en matière de sécurité

Context - Contexte

On an annual basis, the Professional Standards Investigations program conducts at least 50 investigations into alleged CBSA employee misconduct (breaches of CBSA Code of Conduct, Values and Ethics Code for the Public Service, CBSA and Government policies; criminal acts; theft; abuse of authority; excessive use of force; assault or sexual assault; misuse of IT systems, etc.) The program fits into the CBSA's Professional Integrity Program, and mitigates security risks, employee risks (potential corrupt employees), risks associated to loss of agency assets and public assets, and risks associated to the integrity of the agency.

Client Service Results - Résultats axés sur le service à la clientèle

Professional standards and fraud detection investigations, within defined service standards, and expert advisory services, for the Personnel Security and Professional Standards Division (PSPSD), Canada Border Services Agency (CBSA). Service delivery is centralized in CBSA national headquarters. Services include support to domestic and international law enforcement partners on investigations involving a criminal component).

Key Activities - Activités principales

Leads, plans, manages and conducts investigations into internal and external allegations of serious offences and misconduct by employees, including investigations of CBSA employees working in other government departments and agencies (OGDs) in Canada and abroad; and involves, collaborates with and coordinates investigations with other Canadian and foreign security, intelligence and law enforcement organizations. Conducts administrative investigations into employee misconduct on behalf of other departments that do not have investigative capacity and who contract the services of the CBSA and others to perform such activities.

Provides authoritative advice, guidance, recommendations and direction to local and regional management on temporary measures (such as, placing employees in less sensitive duties, separating individuals, issues related to armed officers, securing of evidence, preventing destruction/deletion of evidence, and restricting access to areas or data bases) pending the outcome of investigations.

Leads, coordinates and manages the analysis, evidentiary review, statistical and trend reporting of files throughout the course of and at the end of investigations and reviews; identifies and initiates re-engagement to conduct further research (such as further e-mail reviews, systems usage reports, additional interviews); and recommends additional investigative steps.

Contributes to the review, analysis and development of operational plans and strategies for the Professional Standards Investigation Program; and contributes to the development of Branch and CBSA policies, procedures and guidelines.

Contributes to the development of senior management briefings and reports; provides advice, guidance and recommendations to senior CBSA management and officials on the results of investigations; and prepares documents for further use in administrative tribunals and court proceedings.

Represents the Directorate and Agency on intra and interdepartmental and public-private sector consultations, committees, working groups and project teams; and acts as a witness for the Crown in criminal cases, and for management in Public Service Labour Relations Board and Canadian Human Rights Tribunal proceedings.

Employee's Statement — Déclaration de l'employé

I have been given the opportunity to read and comment on the content of this work description.

J'ai eu l'occasion de lire et commenter le contenu de cette description de travail.

Name of Employee — Nom de l'employé

____ Signature _____ Date

Supervisor's Statement — Déclaration du surveillant

This work description accurately describes the work assigned to this position.

Cette description de travail décrit adéquatement le travail assigné à ce poste.

Name of Supervisor — Nom du surveillant

Signature of Supervisor — Signature du surveillant _____ Date

Authorization — Authorisation

Name of Manager — Nom du gestionnaire	<div style="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> Managers Signature — Signature du gestionnaire__ ____Date
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Criteria

Knowledge and Skill — Connaissance et Habileté

The work requires knowledge of the research, analytical, behavioural, investigative, surveillance, interrogation and interviewing concepts, methodologies, techniques, practices and principles; criminal jurisprudence, the rules of evidence, and legal parameters and terminology; legalities surrounding criminal investigations, criminal proceedings and burden of proof in administrative and criminal investigations and standards for protection of evidence; investigative report writing methods, techniques and practices; workload and case management, risk management, sampling and analysis methods, techniques and practices; and federal government, other public and private sector investigative and intelligence programs, to plan, manage, lead and conduct investigations of allegations of current and former employee misconduct and illegal activities and define their scope, collect, record and secure evidence/testimony, interview witnesses, complainants and respondents; ensure investigative processes reflect due process, fairness and transparency (to ensure that findings and evidence can be sustainable in disciplinary or court proceedings); identity and implement investigative and interrogation methodologies which are aligned with the unique issues and circumstances of individual cases; ensure evidence is obtained and used in compliance with policy, regulatory and legislative guidelines; ensure that administrative investigations or parallel investigations are conducted without negatively impacting on potential criminal prosecutions; provide testimony in court in tribunals; determine the nature of Code of Conduct, CBSA or government policy, or security violations or breaches and the corrective action required; and prepare written investigative reports which are clear, concise and outline process, evidence and information gathered in a format that is transparent to individuals involved in investigations and to senior management and officials involved in pursuing prosecutions of offenders.

The work requires knowledge of CBSA's organization, mandate, programs, authorities, business delivery system and information systems; and the mandate and legislative authorities and jurisdictions of OGDs and Canadian and international law enforcement and intelligence organizations, such as Justice Canada, Public Prosecution Services Canada (PPSC), Canadian Security Establishment (CSE), RCMP, United States Department of Justice, Federal Bureau of Investigation (FBI), United States Customs and Border Protection, United States Immigration and Customs Enforcement, Interpol and other foreign government organizations; Canadian and international systems, databases and sources of information (such as CPIC) and jurisprudence; and legislative environments, to plan manage and lead complex investigations of current and former employee misconduct and criminal actions; consult, negotiate and collaborate with internal and external authorities to challenge, verify or clarify information; identify sources of information, such as CBSA, RCMP, CSE, C&C and Interpol systems and databases; actively contribute to ongoing parallel prosecutions by the Crown; encourage inter-agency cooperation and provide leads on offenses involving other statutes that can be pursued by other agencies; and maintain knowledge and awareness of investigative and law enforcement principles, practices, trends and techniques (including obtaining ongoing formal training from a federally or provincially accredited police academy and from formal courses and accreditation provided by foreign organizations).

The work requires knowledge of federal and foreign government policies, regulations, legislation and case law, such as, the CBSA Code of Conduct, Values and Ethics Code for the Public Service, Criminal Code of Canada, Prevention and Detection of Losses and Illegal Acts, Canada Evidence Act, Canadian Human Rights Act, Public Service Employment Act, Charter of Rights and Freedoms, Security of Information Act, Access to Information Act, Privacy Act, , CBSA Act, CSIS Act, RCMP Act, US Patriot Act, Customs Act, Immigration and Refugee Protection Act, Government of Canada Policy on Government Security, Financial Administration Act, and Public Servant Disclosure Protection Act (PSDPA), to interpret and apply guidelines when planning and conducting investigations and address complex, unique and/or unprecedented issues; provide advice, guidance and recommendations to all levels of management (HQ and the Regions) on investigations and options to address ongoing issues associated with investigations; provide authoritative interpretations and recommendations to Department management and staff; manage the development of operational strategies and frameworks (such as investigative, interviewing, interrogation and consultation strategies and frameworks); identify the legislative obligations of CBSA and other internal and external public and private sector organizations (including foreign organizations); exchange information with international partners; and investigate potential wrongdoing by current and former CBSA employees in Canada and abroad.

Contacts(Contacts

Leads and contributes, as a representative of the Branch and CBSA, to intra and interdepartmental meetings, working groups, project teams, and during formal administrative and criminal proceedings, such as a Court of Law. Establishes, consults, coordinates, fosters and sustains a network and broad range of contacts with Canadian and international intelligence, law enforcement, security and safety organizations, other levels of government and the private sector. Consults with and negotiates to obtain information and cooperation from external organizations, including negotiations to promote interpretations of Memoranda of Understanding (MOUs) and other agreements and guidelines which are favourable to the Agency and ongoing investigations. Collaborates with Canadian and international organizations to discuss issues such as approaches which improve upon existing approaches, methodologies, and best practices. The Network includes but is not limited to: Central agencies such as TBS for submissions; Branches within the Agency, other Government Departments (such as CIC, RCMP, Public Safety, CSIS, PWGSC, HRSDC, pco; CSE and CRA); international, national, and provincial law enforcement agencies; the Border 5 Group (which includes Canada, Australia, New Zealand, the UK and the US); and US Department of Homeland Security, US Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE) and US

Border Patrol agencies.

Interrogates and interviews respondents, witnesses and victims (in Canada and foreign countries) while conducting CBSA investigations into alleged employee misconduct, administrative and security offences by current and former employees; and supports concurrent criminal investigations conducted by domestic and international law enforcement partners. Negotiates with and persuades officials and representatives of foreign public and private sector organizations to provide information and testimony on issues involving the misconduct of current and former CBSA employees, where the individuals being interviewed may be complicit in the misconduct. Negotiates and provides recommendations on corrective actions, such as administrative decisions and improvements to Agency policy, practices and systems. Provides advice, guidance and recommendations to senior management regarding corrective measures, such as placing employees in positions with less sensitive duties, separating individuals, securing

of evidence, and preventing destruction/deletion of evidence pending the outcome of investigations.

Develops and delivers seminars and presentations to managers and employees at Headquarters and the Regions on Professional Standards Investigation Program mandates, objectives and authority to conduct investigations. Promotes Program investigative services, policies and procedures and negotiates and promotes cooperation while conducting investigations.

Provides authoritative advice, guidance and recommendations on the interpretation and application of CBSA and federal government policies, regulations and legislation to address unique, unprecedented and complex professional standards investigation issues. Develops senior management and Ministerial correspondence, reports, papers, briefing notes, Memoranda to Cabinet, presentations and legislative/ regulatory amendments, recommendations and consults with senior management within other authorities and departments on issues related to misconduct investigations conducted by CBSA investigators or their behalf. Provides advice, recommendations and maintains continuous communications with senior management on evolving high profile issues which may attract media attention and/or have a negative impact on the image of the Agency. Produces findings at the end of investigations which directly impact on an employee's standing and reputation in CBSA and provides findings to senior management on the actions of their employees.

Effort - Efforts

Intellectual / Effort Intellectuel

Intellectual effort is required to plan, establish the nature, scope, approach, objectives and analytical, investigative and surveillance methodologies, data/information requirements and lead and conduct of broad investigations into allegations and complaints of wrongdoing by current and former employees (in Canada and abroad). Effort is required to identify and modify investigative, interrogation and surveillance methodologies, techniques and strategies to meet the unique circumstances of individual cases. Effort is required to identify the need for collaboration and/or involvement of external Canadian and foreign law enforcement and intelligence organizations (RCMP, CSE, FBI, DHS, Interpol) for cases involving criminal activity and/or access to databases and systems (RCMP and CPIC) and collaborate with external organizations, including the negotiation and/or interpretation and application of existing agreements and MOUs. Effort is required to identify the need for specialized expertise, such as accounting, monetary audits, forensic internet search, forensic hand writing analysis, forgery, finger printing, chemical analysis, e-mail review, data base audits, coordinate the conduct of specialized reviews, and integrate the findings into final investigative reports and recommendations. Judgment is essential in analyzing and determining relevant evidence, filtering out irrelevant information, validating issues from conflicting and missing evidence, and presenting the most accurate statement of facts and recommendations extracted from the evidence. Effort is required to develop plans and strategies which are unique to specific investigations, including identifying witnesses, obtaining testimony, persuading parties of the need to cooperate with investigations, developing and implementing surveillance strategies, identify the need for and advise individuals of their rights, the implications of misconduct and in consultation with the Director, ensure that all findings from investigations are disclosed to client management as early as possible within the investigation, and that investigation reports are prepared and submitted for quality review and sign-off within established service standards (for ultimate presentation to client management and respondents). Effort is required to identify and conduct research and analysis on rulings and jurisprudence made by courts and tribunals which may reflect conditions, legal tests and other criteria in dealing with complex cases. Effort is required to prepare case summaries to assist the management, Crown, Treasury Board counsel

and/ or law enforcement organizations in making disciplinary decisions or prosecuting individuals.

Intellectual effort is required to lead the review of evidence provided, identify additional information requirements and determine the validity of the evidence in the context of policy and legislative rules governing standards for evidence. Effort is required to interpret and apply policy and legislative guidelines to address unique and/ or unprecedented issues, and provide authoritative advice, guidance and recommendations on the interpretation and application of guidelines to CBSA and external public and private sector managers, officials, representatives and stakeholders. Effort is required to identify and analyze diverse and contentious issues which may not be directly related to specific investigations and case files and determine the significance and relevance in the context of ongoing investigations. Effort is required to develop recommendations and options to managers throughout the Agency on temporary measures, such as, placing employees in less sensitive duties, separating individuals, issues related to armed officers, securing of evidence, preventing destruction/deletion of evidence, and restricting access to areas or data bases pending the outcome of investigations.

Intellectual effort is required to analyze and assess all information gathered during investigations and develop briefings, summaries and recommendations to senior management on conclusions and various courses of action and options; and to testify in administrative tribunals or court proceedings. Effort is required to develop advice and recommendations to senior management, investigators, senior counsel and other CBSA officials on the feasibility of proceeding with administrative or legal action based on the analysis and review of information and evidence obtained through investigations and develop strategies and plans to collaborate with external organizations to proceed in a manner which is efficient, effective and protects and promotes the interests of the Agency.

Intellectual effort is required to analyze and assess the provisions of new or changing policies and legislation, determine the implications on Professional Standards investigations and develop recommendations, changes to operating practices and policy proposals to address potential areas of concern. Effort is required to input and track case file progress in case management database, and to provide input to the development of program performance indicators and trend reports for senior management. Effort is required to identify inefficiencies and deficiencies in existing Professional Standards Investigation related policies, strategies and

-6

frameworks, conduct research and develop options and recommendations for consideration by the manager and senior management, including the development of CBSA policies, proposals for legislative amendments, MOUs and reciprocal agreements with other Canadian and international law enforcement and intelligence agencies.

Intellectual effort is required to assess the mental and emotional stability of employees and recognize the potentially violent or hostile witnesses. Effort is required to adapt to hostile or suicidal employees and to diffuse these situations.

Physical / Effort Physique

The work requires sitting and standing for extended periods of time, travel, extensive and lengthy interviews of witnesses and respondents.

Responsibility - Responsabilités

Human Resources / Ressources humaines

Leads and manages the work of investigative project teams.

Financial / Ressources financiers

Prepares cost benefit and risk analysis for the conduct of various investigative projects and provides input to the manager on financial planning issues. Identifies issues, such as funding pressures and shortfalls and provides recommendations to the manager on the reallocation of funds between investigative projects.

Technical / Ressources techniques

Uses and cares for a personal computer and standard office equipment.

Working Conditions - Conditions de travail

Physical / Environnement de travail physique

The work is conducted in an office environment, with a significant amount of travel across Canada on short notice

Psychological / Environnement de travail psychologique

The work involves responding to multiple requests for services; urgent requests; and changing priorities, sensitive interviews of witnesses and respondents



Departmental Security Officer I

Agent de sécurité ministérielle

Director General / Directeur général

Security and Professional Standards Directorate I

Direction des normes professionnelles actA.1.R

WORK DESCRIPTION - DESCRIPTION DE TRAVAIL

Position Number - Numéro du poste New	Position Title - Titre du poste Senior Investigator, Professional Standards
Position Classification - Classification du poste AS-06 (P)	National Occupation Code - Code national des professions
Department/Agency - Ministère/organisme Canada Border Services Agency	Effective Date - Date d'entrée en vigueur XXXX 2011 June 29, 2009 <i>PH</i>
Organizational Component - Composante organisationnelle Comptrollership Branch Security and Professional Standards Directorate Personnel Security and Professional Standards Division	
Geographic Location - Lieu géographique National Capital Region	Job/Generic Number - Numéro d'emploi / de générique
Supervisor Position Number - Numéro du poste du surveillant	Supervisor Position Title - Titre du poste du surveillant Manager, Professional Standards Investigations
Supervisor Position Classification - Classification du poste du surveillant AS-07	
Language Requirements - Exigences linguistiques Bilingual imperative English Essential	Linguistic Profile - Profil linguistique BBB, CBC
Communication Requirements - Exigences en matière de communication	
Office Code - Code de bureau	Security Requirements - Exigences en matière de sécurité Top Secret and Secret

Context - Contexte

On an annual basis, the Professional Standards Investigations program conducts at least 50 investigations into alleged CBSA employee misconduct (breaches of CBSA Code of Conduct, Values and Ethics Code for the Public Service, CBSA and Government policies; criminal acts; theft; abuse of authority; excessive use of force; assault or sexual assault; misuse of IT systems, etc.) The program fits into the CBSA's Professional Integrity Program, and mitigates security risks, employee risks (potential corrupt employees), risks associated to loss of agency assets and public assets, and risks associated to the integrity of the agency.

Client Service Results - Résultats axés sur le service à la clientèle

Professional standards and fraud detection investigations, within defined service standards, and expert advisory services, for the Personnel Security and Professional Standards Division

(PSPSD), Canada Border Services Agency (CBSA). Service delivery is centralized in CBSA national headquarters. Services include support to domestic and international law enforcement partners on investigations involving a criminal component).

Key Activities - Activités principales

Leads, plans, manages and conducts investigations into internal and external allegations of serious offences and misconduct by employees, including investigations of CBSA employees working in other government departments and agencies (OGDs) in Canada and abroad; and involves, collaborates with and coordinates investigations with other Canadian and foreign security, intelligence and law enforcement organizations. Conducts administrative investigations into employee misconduct on behalf of other departments that do not have investigative capacity and who contract the services of the CBSA and others to perform such activities.

Provides authoritative advice, guidance, recommendations and direction to local and regional management on temporary measures (such as, placing employees in less sensitive duties, separating individuals, issues related to armed officers, securing of evidence, preventing destruction/deletion of evidence, and restricting access to areas or data bases) pending the outcome of investigations.

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Contributes to the review, analysis and development of operational plans and strategies for the Professional Standards Investigation Program; and contributes to the development of Branch and CBSA policies, procedures and guidelines.

Contributes to the development of senior management briefings and reports; provides advice, guidance and recommendations to senior CBSA management and officials on the results of investigations; and prepares documents for further use in administrative tribunals and court proceedings.

Represents the Directorate and Agency on intra and interdepartmental and public-private sector consultations, committees, working groups and project teams; and acts as a witness for the Crown in criminal cases, and for management in Public Service Labour Relations Board and Canadian Human Rights Tribunal proceedings.

Employee's Statement – Déclaration de l'employé

I have been given the opportunity to read and comment on the content of this work description.
J'ai eu l'occasion de lire et commenter le contenu de cette description de travail.

Name of Employee – Nom de l'employé

Signature

Date

Supervisor's Statement – Déclaration du surveillant

This work description accurately describes the work assigned to this position.
Cette description de travail décrit adéquatement le travail assigné à ce poste.

Name of Supervisor – Nom du surveillant

Signature of Supervisor – Signature du surveillant

Date

Authorization – Authorisation

Name of Manager – Nom du gestionnaire

Roger E Laverne
Director General

Manager's Signature – Signature du gestionnaire

Mar 30/11
Date

Criteria

Knowledge and Skill – Connaissance et Habileté

The work requires knowledge of the research, analytical, behavioural, investigative, surveillance, interrogation and interviewing concepts, methodologies, techniques, practices and principles; criminal jurisprudence, the rules of evidence, and legal parameters and terminology; legalities surrounding criminal investigations, criminal proceedings and burden of proof in administrative and criminal investigations and standards for protection of evidence; investigative report writing methods, techniques and practices; workload and case management, risk management, sampling and analysis methods, techniques and practices; and federal government, other public and private sector investigative and intelligence programs, to plan, manage, lead and conduct investigations of allegations of current and former employee misconduct and illegal activities and define their scope, collect, record and secure evidence/testimony, interview witnesses, complainants and respondents; ensure investigative processes reflect due process, fairness and transparency (to ensure that findings and evidence can be sustainable in disciplinary or court proceedings); identify and implement investigative and interrogation methodologies which are aligned with the unique issues and circumstances of individual cases; ensure evidence is obtained and used in compliance with policy, regulatory and legislative guidelines; ensure that administrative investigations or parallel investigations are conducted without negatively impacting on potential criminal prosecutions; provide testimony in court in tribunals; determine the nature of Code of Conduct, CBSA or government policy, or security violations or breaches and the corrective action required; and prepare written investigative reports which are clear, concise and outline process, evidence and information gathered in a format that is transparent to individuals involved in investigations and to senior management and officials involved in pursuing prosecutions of offenders.

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and legislative environments, to plan manage and lead complex investigations of current and former employee misconduct and criminal actions; consult, negotiate and collaborate with internal and external authorities to challenge, verify or clarify information; identify sources of information, such as CBSA, RCMP, CSE, CPIC and Interpol systems and databases; actively contribute to ongoing parallel prosecutions by the Crown; encourage inter-agency cooperation and provide leads on offenses involving other statutes that can be pursued by other agencies; and maintain knowledge and awareness of investigative and law enforcement principles, practices, trends and techniques (including obtaining ongoing formal training from a federally or provincially accredited police academy and from formal courses and accreditation provided by foreign organizations).

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Contacts/ Contacts

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countries) while conducting CBSA investigations into alleged employee misconduct, administrative and security offences by current and former employees; and supports concurrent criminal investigations conducted by domestic and international law enforcement partners. Negotiates with and persuades officials and representatives of foreign public and private sector organizations to provide information and testimony on issues involving the misconduct of current and former CBSA employees, where the individuals being interviewed may be complicit in the misconduct. Negotiates and provides recommendations on corrective actions, such as administrative decisions and improvements to Agency policy, practices and systems. Provides advice, guidance and recommendations to senior management regarding corrective measures, such as placing employees in positions with less sensitive duties, separating individuals, securing of evidence, and preventing destruction/deletion of evidence pending the outcome of investigations.

Develops and delivers seminars and presentations to managers and employees at Headquarters and the Regions on Professional Standards Investigation Program mandates, objectives and authority to conduct investigations. Promotes Program investigative services, policies and procedures and negotiates and promotes cooperation while conducting investigations.

Provides authoritative advice, guidance and recommendations on the interpretation and application of CBSA and federal government policies, regulations and legislation to address unique, unprecedented and complex professional standards investigation issues. Develops senior management and Ministerial correspondence, reports, papers, briefing notes, Memoranda to Cabinet, presentations and legislative/ regulatory amendments, recommendations and consults with senior management within other authorities and departments on issues related to misconduct investigations conducted by CBSA investigators or their behalf. Provides advice, recommendations and maintains continuous communications with senior management on evolving high profile issues which may attract media attention and/or have a negative impact on the image of the Agency. Produces findings at the end of investigations which directly impact on an employee's standing and reputation in CBSA and provides findings to senior management on the actions of their employees.

Effort - Efforts

Intellectual / Effort Intellectuel

Intellectual effort is required to plan, establish the nature, scope, approach, objectives and analytical, investigative and surveillance methodologies, data/information requirements and lead and conduct of broad investigations into allegations and complaints of wrongdoing by current and former employees (in Canada and abroad). Effort is required to identify and modify investigative, interrogation and surveillance methodologies, techniques and strategies to meet the unique circumstances of individual cases. Effort is required to identify the need for collaboration and/or involvement of external Canadian and foreign law enforcement and intelligence organizations (RCMP, CSE, FBI, DHS, Interpol) for cases involving criminal activity and/or access to databases and systems (RCMP and CPIC) and collaborate with external organizations, including the negotiation and/or interpretation and application of existing agreements and MOUs. Effort is required to identify the need for specialized expertise, such as accounting, monetary audits, forensic internet search, forensic hand writing analysis, forgery, finger printing, chemical analysis, e-mail review, data base audits, coordinate the conduct of specialized reviews, and integrate the findings into final investigative reports and

recommendations. Judgment is essential in analyzing and determining relevant evidence, filtering out irrelevant information, validating issues from conflicting and missing evidence, and presenting the most accurate statement of facts and recommendations extracted from the evidence. Effort is required to develop plans and strategies which are unique to specific investigations, including identifying witnesses, obtaining testimony, persuading parties of the need to cooperate with investigations, developing and implementing surveillance strategies, identify the need for and advise individuals of their rights, the implications of misconduct and in consultation with the Director, ensure that all findings from investigations are disclosed to client management as early as possible within the investigation, and that investigation reports are prepared and submitted for quality review and sign-off within established service standards (for ultimate presentation to client management and respondents). Effort is required to identify and conduct research and analysis on rulings and jurisprudence made by courts and tribunals which may reflect conditions, legal tests and other criteria in dealing with complex cases. Effort is required to prepare case summaries to assist the management, Crown, Treasury Board counsel and/ or law enforcement organizations in making disciplinary decisions or prosecuting individuals.

Intellectual effort is required to lead the review of evidence provided, identify additional information requirements and determine the validity of the evidence in the context of policy and legislative rules governing standards for evidence. Effort is required to interpret and apply policy and legislative guidelines to address unique and/ or unprecedented issues, and provide authoritative advice, guidance and recommendations on the interpretation and application of guidelines to CBSA and external public and private sector managers, officials, representatives and stakeholders. Effort is required to identify and analyze diverse and contentious issues which may not be directly related to specific investigations and case files and determine the significance and relevance in the context of ongoing investigations. Effort is required to develop recommendations and options to managers throughout the Agency on temporary measures, such as, placing employees in less sensitive duties, separating individuals, issues related to armed officers, securing of evidence, preventing destruction/deletion of evidence, and restricting access to areas or data bases pending the outcome of investigations.

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Intellectual effort is required to analyze and assess the provisions of new or changing policies and legislation, determine the implications on Professional Standards investigations and develop recommendations, changes to operating practices and policy proposals to address potential areas of concern. Effort is required to input and track case file progress in case management database, and to provide input to the development of program performance indicators and trend reports for senior management. Effort is required to identify inefficiencies and deficiencies in existing Professional Standards Investigation related policies, strategies and frameworks, conduct research and develop options and recommendations for consideration by the manager and senior management, including the development of CBSA policies, proposals for legislative amendments, MOUs and reciprocal agreements with other Canadian and

international law enforcement and intelligence agencies.

Intellectual effort is required to assess the mental and emotional stability of employees and recognize the potentially violent or hostile witnesses. Effort is required to adapt to hostile or suicidal employees and to diffuse these situations.

Physical / Effort Physique

The work requires sitting and standing for extended periods of time, travel, extensive and lengthy interviews of witnesses and respondents.

Responsibility - Responsabilités

Human Resources / Ressources humaines

Leads and manages the work of investigative project teams.

Financial / Ressources financiers

Prepares cost benefit and risk analysis for the conduct of various investigative projects and provides input to the manager on financial planning issues. Identifies issues, such as funding pressures and shortfalls and provides recommendations to the manager on the reallocation of funds between investigative projects.

Technical / Ressources techniques

Uses and cares for a personal computer and standard office equipment.

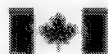
Working Conditions - Conditions de travail

Physical / Environnement de travail physique

The work is conducted in an office environment, with a significant amount of travel across Canada on short notice

Psychological / Environnement de travail psychologique

The work involves responding to multiple requests for services; urgent requests; and changing priorities, sensitive interviews of witnesses and respondents



Canada Border
Services Agency

Agence des services
frontaliers du Canada



Policy on Internal Investigations into Alleged or Suspected Employee Misconduct

March 13, 2007



PROTECTION • SERVICE • INTEGRITY

Canada

Policy

1. Allegations or suspicions of employee misconduct that includes negligence and carelessness must be promptly reported to the Manager, Internal Affairs and thoroughly investigated.

Policy Objective

2. The objective of this policy is to ensure that allegations or suspicions of employee misconduct with respect to violations of legislation or other laws, rules and regulations administered by the Canada Border Services Agency (CBSA) are promptly reported and investigated by objective and qualified persons.

Definitions

3. Misconduct includes any action or inaction by an employee that is contrary to established policy, standards, procedures or practices of the CBSA; violations of legislation for which criminal sanctions are applicable; or violations of other laws, rules and regulations administered by the CBSA or any other act which would bring the CBSA into disrepute or effect the Agency's working relationship with other law enforcement partners.
4. Manager means any person who acts in a supervisory role or managerial capacity.

Application

5. This policy is applicable to the management of the CBSA, employees (permanent, term, casual, parttime), contract and private agency personnel and to individuals seconded or assigned to the CBSA, including students.

Policy Requirements

6. Employees are to promptly report to their manager or to Regional Security Officer, or when this is not feasible, to the Corporate Security and Internal Affairs Division (CSIAD), any allegation, suspicion or information concerning employee misconduct.
7. When there is an allegation or suspicion indicating employee misconduct involving violations of criminal legislation or other laws, rules and regulations administered by the CBSA, the Director or the delegated manager must report it immediately to the Manager, Internal Affairs and to the appropriate Vice President. A determination will be made between the local Director and the Manager, Internal Affairs, CSIAD as to who will conduct the investigation.
8. Treasury Board policy stipulates that all suspected cases of loss or theft of money, fraud, or any other offense or illegal act against the Crown by an employee must be fully investigated and reported to the

police agency having jurisdiction. Criminal proceedings are generally the exclusive responsibility of law enforcement authorities.

Responsibilities

Internal Affairs Section, Corporate Security and Internal Affairs Division

9. Internal Affairs, CSIAD, subject to legal and jurisdictional constraints, is responsible for:

- Conducting, or causing to be conducted, investigations into alleged or suspected employee misconduct involving:
 - (i.) Theft or loss of revenue, assets, money, seized or abandoned goods;
 - (ii.) Unauthorized access to and/or disclosure of client or other sensitive information;
 - (iii.) Violations by employees of legislation, or other Federal Statutes (e.g. Customs Act or Immigration Refugee Protection Act or Criminal Code);
 - (iv.) Fraudulent transactions on a CBSA system resulting in a reimbursement or reduction of amount owed to which the person or company is not entitled;
 - (v.) Fraudulent claims for travel expenses, overtime, leave, relocation, etc.;
 - (vi.) Destruction, mutilation, alteration, falsification or concealment of documents, records, certificates, controlled assets or directing, proposing, counseling or causing any persons to take such actions; and
 - (vii.) Breaches of the CBSA and Public Service Commission Code of Ethics and Conduct, or other administrative policies.
 - (viii.) Other items of serious concern to the CBSA.
- Informing the Vice Presidents of investigations being conducted in their area of responsibility, and reporting the results of the investigation to them and to any other appropriate authorities as required;

- Ensuring that investigations are objective, thorough and conducted by qualified persons, with due respect for the rights and understanding of the obligations of the individuals involved;
- Ensuring that all cases involving the theft of revenue, money, assets, seized or abandoned goods, fraud, destruction, mutilation, falsification or concealment of records or directing, proposing, counseling or causing any persons to such actions, or any other offenses or illegal acts against the Crown which have been committed by an employee are reported to the police agency having jurisdiction;
- Reporting to management any shortcomings in policies and procedures noted during an investigation, which may have system or organization-wide implications, to allow for corrective measures to be taken to prevent further recurrence of losses and offenses.

Employees

10. Employees are expected to obey all legislation and other laws and regulations administered by the CBSA, thereby maintaining their integrity and that of the CBSA.
11. Employees are obliged to provide the necessary cooperation and assistance in the conduct of an investigation. This includes affording complete access to CBSA information systems, documents and records, to the extent that such access is legally permitted.

Directors or Delegated Managers

12. Directors or their delegated managers are to report allegations or suspicions of misconduct on the part of employees, in a timely manner, to the Manager, Internal Affairs, CSIAD and to the appropriate Vice President.
13. When it is agreed that local management will conduct the investigation, Directors or their delegated managers are to inform the local Staff Relations consultant and provide a copy of the investigation report, to Internal Affairs, CSIAD and the appropriate Vice President, in a timely manner.

Reporting Procedures

14. Allegations of employee misconduct may be reported either by telephone or secure facsimile transmission to the Manager, Internal Affairs, and CSIAD, at (613) 948-9347 or by facsimile at (613) 9416105.
15. These reporting procedures are designed to ensure an effective reporting process and do not detract from the requirement for Vice Presidents to prepare reports, issue sheets, etc. and to advise the President of the CBSA when required.

Accountability Process

16. The CSIAD will monitor compliance with this policy.

References

The following references are applicable to this policy

- *Financial Administration Act*;
- Public Service Code of Conduct;
- CBSA Conflict of Interest Guidelines;
- Policy on Losses of Money and Offenses and Other Illegal Acts Against the Crown (Treasury Board Manual, Comptrollership Volume, Chapter 4.7);
- CBSA Security Manual, Chapter 15 - Reporting of Security Incidents;
- *Access to Information Act and Privacy Act*;
- *Criminal Code of Canada*;
- *Immigration Refugee Protection Act*
- *Customs Act*
- *Canadian Charter of Rights and Freedoms*;
- Manager's Guide to Conducting Internal Investigations

Enquiries

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Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process

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Preamble

The information contained in this Guide is grouped into two sections. The first section presents an overview of the investigation process for the *Policy on Harassment Prevention and Resolution* and the *Directive on the Harassment Complaint Process*. The second section provides more details for each stage of the process; and finally the annexes contain additional information, tools, templates and tips to conduct a high quality and professional investigation. The Guide can therefore be used according to the experience and knowledge of the user.

Section I

1.1 Purpose

Harassment investigations require that investigators not only have the knowledge and the research, planning, interviewing and analytical skills, they must also be sensitive to the emotional issues and the impact that an alleged harassment situation has on individuals and on the workplace as a whole. This guide has been designed to ensure that the investigator will be able to undertake thorough and impartial investigations into harassment allegations. It is also intended to provide a reference document that will assist the person responsible for managing the harassment complaint process to ensure the highest degree of quality.

The guide will also assist the parties in understanding the investigative process by:

1. Clarifying the role and responsibilities of investigators in conducting a thorough, timely, sensitive, and discreet investigation which includes:
 - Preparing an effective plan for identifying and collecting information;
 - Analyzing and summarizing the information and evidence obtained from interviews and pertinent documentation; and
 - Preparing a clear and concise preliminary summary of facts and an investigation report.
2. Providing suggestions and standards of practice for each step in the investigative process; and
3. Providing investigative and reporting tools.

The Policy on Harassment Prevention and Resolution

The Treasury Board Policy on Harassment Prevention and Resolution defines harassment as follows:

Improper conduct by an individual, that is directed at and offensive to another individual in the workplace, including at any event or any location related to work, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the Canadian Human Rights Act (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).

Harassment is normally a series of incidents but can be one severe incident which has a lasting impact on the individual.

Criteria to be met to establish whether there was a breach of the Policy:

To substantiate the allegations, the investigation must demonstrate that, according to the balance of probability:

- a. The respondent displayed an **improper and offensive conduct** including objectionable acts, comments or displays, or acts of intimidation or threats, or acts, comments or displays in relation to a prohibited ground of discrimination under the Canadian Human Rights Act;
- b. The behaviour was **directed at** the complainant;
- c. The complainant was **offended or harmed**, including the feeling of being demeaned, belittled, personally humiliated or embarrassed, intimidated or threatened;
- d. The respondent **knew or reasonably ought to have known** that such behaviour would cause offence or harm; and
- e. The behaviour occurred in the **workplace** or at any **location or any event related to work**, including while on travel status, at a conference where attendance is sponsored by the employer, at employer sponsored training activities/information sessions and at employer sponsored events, including social events.

1.2 Responsibility and Authority

The Policy provides that the ultimate responsibility and authority for preventing and addressing harassment in the workplace rest with the Deputy Head and that person's designated official(s).

Harassment investigators are expected to meet the *Competencies Profile for Harassment Investigators* which can be obtained from the Treasury Board Secretariat (TBS) website.

Application

The *Policy on Harassment Prevention and Resolution* applies to the core public administration which includes the organizations named in Schedule I and the other portions of the federal public administration named in Schedule IV of the *Financial Administration Act* unless excluded by specific acts, regulations or Orders in Council.

It covers employee behaviours in the workplace or at any location or any event related to work, including while on travel status, at a conference where the attendance is sponsored by the employer, at employer sponsored training activities/information sessions and at employer sponsored events, including social events.

The *Directive on the Harassment Complaint Process* flows from the TB *Policy on Harassment Prevention and Resolution* and requires the establishment and the maintenance of an effective harassment complaint process. It sets out specific roles and responsibilities of the designated official(s) pertaining to the application of the Directive.

Though other persons who work for the core public administration such as contractors, volunteers, temporary workers hired through agencies and Governor in Council appointees are excluded from the complaint process, managers should address any alleged harassment involving these individuals in accordance with the spirit of the Policy and the Directive. Members of the public cannot file a complaint under the Policy; however management should ensure the alleged harassment concerns are addressed.

In addition the *Guide on Applying the Harassment Resolution Process* should be read in conjunction with the Directive as it is fundamental in interpreting and applying efficiently the harassment complaint process.

Time Limit

The written complaint of harassment should be submitted within 12 months of the last incident or event of alleged harassment (unless there are extenuating circumstances) as prescribed by the *Directive on the Harassment Complaint Process*. Allegations concerning events which occurred outside of this time limit can be included if the complainant can demonstrate that the incidents are directly related to the allegations that fall within the prescribed time limits. This is especially important in cases where the complainant intends to demonstrate a pattern of events.

Privacy and Disclosure of Information

The Privacy Act requires that Federal Government institutions that collect personal information from individuals for an administrative purpose inform them of the purpose for which it is being collected. The information provided in the course of an investigation is collected under the authority of the Financial Administration Act and is considered to be required for the purpose of dealing with harassment allegations, to make decisions as to whether or not harassment has occurred, and in such cases to determine appropriate action, including disciplinary and/or corrective measures.

Furthermore, the Privacy Act prohibits a Federal Government institution from using or disclosing personal information for any other purpose than that for which it was collected unless in accordance with specific exceptions cited at section 8 of that Act (example: for complying with a subpoena, for archival purposes or for research or statistical purposes).

The Privacy Act establishes the rights of individuals to:

- Examine or obtain copies of the personal information kept about them by federal government agencies (subject to specific exceptions such as where the release of information might be injurious to national security or to the conduct of a criminal investigation);
- Ask to correct any errors or, if this request is refused, to note on the record itself that the accuracy of a record is contested; and
- Know why the information is being collected.

The Privacy Act also governs the collection, use, disclosure, retention and disposal of personal information in regard to harassment complaints and the resolution thereof. This type of personal information is protected under the Act and will be stored in a personal information bank designated by the organization.

The Access to Information Act gives Canadian citizens the right to have access to information in federal government records. However, this is subject to exemptions, where the disclosure of the information could be injurious to certain interests (example: the safety of individuals or the defence of Canada) or where the information falls within a specific class such as, personal information or information which is subject to solicitor-client privilege.

The individuals referred to in a harassment investigation report have the right to know, both under the Privacy Act and in accordance with the principles of natural justice, what has been said about them and by whom (although at times exceptions may apply). They have the right to request both their own personal information and any other information that is relevant to the harassment allegation and investigation thereof.

To obtain further information about *Access to Information and Privacy*, please consult Annex 11 of the Guide, *Content and Disclosure of Harassment Investigation Reports*.

1.3 The Investigation Process

Every effort should be made to resolve workplace issues through an informal resolution process. Informal resolution processes are also commonly called interest based conflict resolution, Informal Conflict Management System and alternative conflict resolution. However, when this

process has been unsuccessful, declined by the parties or if it is deemed inappropriate, the person responsible for managing the harassment complaint process may initiate an administrative investigation to determine whether the allegations are founded or not. An effective investigation of harassment allegations is fundamental to the successful resolution of workplace harassment.

There can be several participants in the investigation process. This includes complainants, respondents and witnesses. During the investigation all parties are expected to co-operate in the complaint process if and when called upon to do so.

Discussion of all aspects pertaining to the complaint should be limited to those who need to know in order to minimize damage to the work environment.

An overview of the administrative investigation process is provided below. Each element of the process is described in greater detail throughout this Guide.

- **Stage One: Selecting and Mandating the Investigator**
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- **Stage Two: Planning the Investigation - Preparing the file**
↓
- **Stage Three: Conducting the Investigation – Establishing the facts**
↓
- **Stage Four: Validating the facts - Preliminary Summary of Facts**
↓
- **Stage Five: Analysis and Conclusion**
↓
- **Stage Six: Report**
↓
- **Stage Seven: Administrative Closure**

Stages of the Administrative Investigation

Stage One - Selecting and Mandating the Investigator

The key to conducting an investigation that is fair, prompt, and impartial starts with the selection of an investigator who can create an environment of trust and confidence throughout the investigation. Equally important is the establishment of a proper investigation mandate for the investigator. A sample investigation mandate can be found at [Annex 1](#).

In selecting and mandating the investigator, it is important to remember that:

- The investigator appointed must be capable of conducting an independent investigation in a thorough, timely, impartial, unbiased, discreet, and sensitive manner.
- The investigator must meet the *Competencies Profile for Harassment Investigators*.
- Once appointed, the investigator will be provided with a written mandate that will authorize, govern and focus the activities associated with the investigation.

Stage Two – Planning the Investigation – Preparing the File

In order to plan the investigation and prepare the file, the following steps should be followed by the investigator:

1. Obtain, review, clarify and negotiate and sign the mandate assigned by the person responsible for managing the harassment complaint process;
2. Review the allegations and ensure that the specific allegations are clear and have been provided in writing to the respondent and that he or she has been given an opportunity to respond to them. If the allegations have not been provided to the respondent, the investigator should contact the person responsible for managing the harassment complaint process and ask him/her to do so.
3. Review applicable legislation, policies and related jurisprudence, as well as the criteria to be met under the Policy and Directive;
4. Prior to the commencement of the investigation, confirm with the person responsible for managing the harassment complaint process whether the parties understand their rights and responsibilities, including their right to be accompanied during the investigation process;
5. Prepare an investigation plan (Annex 3 of this Guide provides further details on preparing an investigation plan); and
6. Obtain and review all supporting documents relevant to the matters under investigation.

Stage Three – Conducting the Investigation – Establishing the Facts

Applying the principles of procedural fairness (see Section II), the investigator should interview the parties as well as any pertinent witnesses with respect to each allegation to ascertain all relevant facts relating to the complaint. In particular, the investigator should consider the following questions:

- Is there information to support or refute the allegations? If yes, what is it?
- What was the period of time over which the conduct took place?
- Is there information available to suggest that the conduct was intentional?
- Does it appear that the conduct was persistent, pervasive?
- What have the repercussions and impact of the situation been for the parties?

Should additional allegations be made during the course of the investigation, such allegations are to be brought to the attention of the person responsible for managing the harassment complaint process to determine whether they should be included in the mandate for investigation. If these allegations become part of the investigation, they are to be presented in writing to the respondent.

Should opportunities for the use of an informal resolution processes arise, at the suggestion of either party, during the investigation process, this should be discussed with the person responsible for managing the harassment complaint process who will suspend the investigation pending the outcome of the informal process.

Stage Four – Validating the Facts – Preliminary Summary of Facts

Once the investigator has gathered the relevant facts he or she must validate this information with the parties. In order to do so, the investigator will:

1. Prepare a preliminary summary of facts containing the following elements:
 - A description of the allegations; and
 - A description of the background and evidence that has been collected in relation to each allegation.
2. Submit the preliminary summary of facts to the person responsible for managing the harassment complaint process, ensuring respect of the requirements of the *Privacy Act* and *Access to Information Act*.
3. Ensure the parties have the opportunity to provide written comments.
4. Consider any additional information provided by the parties and incorporate it into the report if it is deemed appropriate to do so.

To obtain a sample preliminary summary of facts, please consult [Annex 8](#) of this Guide.

Stage Five - Analysis and Conclusion

After final disclosure of the facts to the parties, the investigator will:

- Determine and identify the substance of each allegation;
- Determine whether or not, according to the balance of probability, the behaviour occurred and if so, whether the behaviour meets the definition of harassment set out in the Policy; and
- If the allegations are not founded, determine whether the allegations were made vexatiously or in bad faith, if asked to do so by the person responsible for managing the harassment complaint process; and
- Comment on any underlying factor(s) encountered during the course of the investigation that may have contributed to the situation or may have had a negative effect on the work environment, if asked to do so by the person responsible for managing the harassment complaint process.

For further information about analysing the facts, refer to [Annex 7](#) of this Guide.

Stage Six - Report

The investigator will then prepare the final report relying on the information from the preliminary summary of facts. The final report should contain the following elements:

- A description of the allegations;
- A description of the investigation process followed;
- A description of the background information and evidence that supports or refutes each allegation;
- An analysis of the evidence in respect to each allegation; and
- A statement as to whether or not the behaviour described in each allegation constitutes a breach of the Policy.

The final report must also be written in accordance with the requirements of the *Privacy Act* and *Access to Information Act*. It is then submitted to the person responsible for managing the harassment complaint process with all related supporting documents and statements from the parties and the witnesses with the complete investigation file.

Annex 9 of this Guide may be helpful in drafting the investigation report.

Stage Seven - Administrative Closure

In order to achieve administrative closure, the person responsible for managing the harassment complaint process:

- Informs the parties of his/her decision with respect to the allegations;
- Provides the parties with a copy of the final report; and
- Informs the parties' managers and provides them with a copy of the final report where a decision on disciplinary measures has to be made by the manager or when deemed appropriate. Disciplinary decisions will be made by the manager in consultation with the Labour Relations Officer.

The final report accompanied by the decision letter is sent to the parties and constitutes administrative closure for the purpose of the harassment resolution process.

Section II

Stage One: Selecting and Mandating the Investigator

Selecting an Investigator

The investigator appointed by the person responsible for managing the harassment complaint process must be capable of conducting an independent investigation in a thorough, timely, discreet, and sensitive manner in the language of the parties' and witnesses' choice and should be trained in harassment investigation techniques. The investigator must be impartial and unbiased.

At times, it may be necessary to obtain an investigator from outside the Federal Public Service. In determining whether it would be appropriate to use the services of an external investigator, the person responsible for managing the harassment complaint process should consider the following factors:

- Cost;
- Timeliness, degree of urgency;
- Real or perceived objectivity;
- Availability of internal investigators;
- The predicted length and complexity of the investigation and the organization's ability to use an internal resource for a lengthy period of time; and

- Level of security required.

The investigator must have a security clearance appropriate for the case being investigated and must meet the *Competencies Profile for Harassment Investigators*. Public Works and Government Services Canada provides a list of external investigators approved to investigate harassment complaints in the Public Service. In certain cases, there may be occasions where an investigation team of two or more investigators is warranted. In determining whether this approach is warranted, the person responsible for managing the harassment complaint process should consider the impact of gender, race, organizational culture, and language, among other things, on the investigation as well as its scope and complexity.

Roles and Responsibilities of the Investigator

The investigator is responsible for managing the harassment investigation. Essentially, the investigator is accountable for:

- Researching and planning the investigation including gathering, examining and recording all relevant evidence from available documentation;
- Presenting an investigation plan to the person responsible for managing the harassment complaint process;
- Identifying gaps in information, potential sources of additional information and persons who may be able to supplement or corroborate information;
- Planning and preparing investigative and interviewing questions to assist in obtaining the necessary evidence about the alleged incidents;
- Conducting interviews with the parties and relevant witnesses;
- Analyzing the evidence and circumstances and determining the substance of each allegation;
- Preparing the preliminary summary of facts and the investigation report; and
- Ensuring that the parties are aware of their rights and responsibilities, including the right to be accompanied and assisted by a person of their choice.

The Investigator's Mandate

Once appointed, the investigator will be provided with a written mandate by the person responsible for managing the harassment complaint process that will authorize, govern, and focus the activities associated with the investigation. The accountabilities listed above should be clearly spelled out in the mandate.

In order to assist the investigator in understanding the requirements of the investigation, the mandate should contain:

- A clear and detailed statement of the allegations to be investigated, together with a description of the purpose and scope of the investigation to be undertaken;
- A clear delineation of roles and responsibilities vis-à-vis the departmental representative(s) including the person responsible for managing the harassment complaint process;

- Specific instructions regarding issues such as security designation, Access to Information and Privacy, the handling of new allegations, requirements for handling information related to possible criminal activity or other information of wrongdoing under the *Public Service Disclosure Protection Act*, or action to be taken if the possibility of using informal resolution processes becomes evident during the investigation;
- The requirement that the complete investigation file, including all notes and documents collected or created by the investigator in relation to the investigation, are the property of the employer and must be relinquished to the person responsible for managing the harassment complaint process, at his or her request;
- Expected timeframes within which the investigation is to be completed and the date by which the final report is required; and
- A description of the type of resources available to the investigator (e.g. clerical support, meeting space, etc.), if applicable.

An example of a mandate is provided in Annex 1 of this Guide for further clarification. Matters such as the availability of departmental resources, travel costs, contract costs, method of payment, or any other financial matter should be included separately as part of the contract for services.

Other Important Considerations

Investigators must strictly adhere to the investigation mandate. Any issues that arise in the course of the investigation that fall outside of the investigator's mandate should be brought to the attention of the person responsible for managing the harassment complaint process and the mandate should be amended accordingly. The mandate should be limited to investigating allegations of harassment and the investigator should not be mandated nor should he or she undertake informal resolution processes such as mediation or conduct a workplace assessment in conjunction with an investigation since this could lead to a conflict in role and responsibilities.

If the investigator discovers the possibility of a criminal offence having been committed, fraud or wrongdoing under the *Public Service Disclosure Protection Act* during the investigation, the investigator must inform the person alleging such behaviour that this falls outside his or her mandate and that the person who mandated the investigator will be notified accordingly.

The investigator should be sensitive to the possibility of using informal resolution processes as a means of resolving the dispute since this could be beneficial and desirable for the parties. At any time in the process, if the parties are interested in resolving the dispute informally, the person responsible for managing the harassment complaint process should be informed without delay. The use of ICMS processes could lead to resolution of the dispute, or partial resolution of the dispute. In cases where some of the issues are resolved informally, the person responsible for managing the harassment complaint process may ask the investigator to investigate any outstanding issues that were not resolved in this fashion.

Information exchanged in the course of informal resolution processes is confidential and cannot be accessed by the investigator and should not be used or disclosed by the parties in the course of the investigation.

Stage Two: Planning the Investigation

The approach presented in the following section is intended to help ensure the application of the principles of procedural fairness for the parties involved in the investigation. It includes criteria and guidance to help the investigator and the person responsible for managing the harassment complaint process.

Prior to the commencement of the investigation, the investigator should confirm with the person responsible for managing the harassment complaint process whether the parties understand their rights and responsibilities, including their right to be accompanied during the investigation process.

Policies and Legislation

It is essential to have a solid understanding of the Policy, Directive and any related departmental policies, the *Privacy Act* and *Access to Information Act*, as well as any pertinent case law on the issues in dispute.

The Allegations

The written allegations should contain a detailed explanation of the alleged incidents, the name of the respondent, the relationship between the parties, a description of the alleged incidents including the date, time and location and the names of witnesses, if applicable.

Witnesses

The written allegations may include the names of people believed to have witnessed the alleged incidents or those who may have been aware of other information directly related to the allegations. In addition, the response of the respondent may include the names of witnesses.

If there is any uncertainty about their relevance to the investigation, the investigator should clarify their pertinence with the parties. Witnesses must have some direct correlation to the allegations. To determine the relevance of their testimony, the investigator could ask the parties to describe how a certain witness will contribute to the investigation. The investigator has the discretion to determine which witnesses to interview and may decide not to interview certain individuals if it is unlikely that they will add any value to the investigation. For example, in assessing whether the testimony of a witness is relevant, the investigator may decide that a great number of witnesses is not needed to substantiate the same allegation and that anything that is admitted by both parties will not need to be confirmed by a witness.

Documentation

The preparation phase also involves another step – a review of the exhibits presented by the parties and the written allegations and response to the allegations. A review of the documents will allow the investigator to identify additional witnesses and will assist in understanding the basis for the allegations.

The Investigation File

The investigation process is subject to the provisions of the *Access to Information Act* and the *Privacy Act*. Essentially, **this means that witnesses cannot be assured that the exchanges with the investigator will be kept confidential**. Any person questioned in the course of an investigation may have access to the investigation file to obtain information that relates to him or her since this is considered to be their own personal information. This principle applies to interview notes and any other documentation that the investigator uses during the investigation. The investigator should take care to record personal information only when it is relevant and appropriate, and to clearly distinguish between facts and opinions.

To obtain further information about access to information and privacy, the person responsible for managing the harassment complaint process may contact the Access to Information and Privacy Coordinator in their organization. In addition, Annex 11 of this Guide provides some tips on access to information and privacy.

The Investigation Plan

The final stage of preparation entails creating the investigation plan. The plan is provided to the person responsible for managing the harassment complaint process prior to the commencement of the investigation to ensure that the investigation complies with the mandate.

The investigation plan can be used as an initial checklist to ensure that all of the critical elements will be covered; it includes:

- The names of the parties and witnesses that will be interviewed;
- Any documentary evidence that will be examined; and
- Timelines.

Depending on the complexity of the investigation, the plan will be either more or less detailed. It should be reviewed throughout the investigation to determine if there is a need to amend it as the investigation unfolds. The person responsible for managing the harassment complaint process should be consulted to ensure that the mandate is being properly respected. Tips on preparing an investigation plan can be found at Annex 3.

Stage Three: Conducting the Investigation

The Concept of Procedural Fairness

The duty to act fairly must be distinguished from the traditional principles of natural justice applicable to courts of justice and quasi-judicial tribunals. When a decision that will have serious consequences for those involved is made, there is a duty to provide certain procedural protections throughout the process. The more serious the allegations and potential negative repercussions for the person accused of harassment, the more stringent the aspects of procedural fairness should be. Investigators should always respect procedural fairness, but the extent to which measures are taken to protect these principles will depend on the nature of the allegations

and the consequences for the parties; this concept is explained in greater detail in the following paragraphs.

The duty to act fairly in conducting administrative investigations was expressed in a decision of the Supreme Court of Canada (*Nicholson v. Haldimand Norfolk (Regional) Police Commissioners*, [1979] 1 S.C.R. 311):

"In my opinion, the appellant should have been told why his services were no longer required and given an opportunity, whether orally or in writing as the Board might determine, to respond. The Board itself, I would think, would wish to be certain that it had not made a mistake in some fact or circumstance which it deemed relevant to its determination. Once it had the appellant's response, it would be for the Board to decide on what action to take (...) Such a course provides fairness to the appellant, and it is fair as well to the Board's right, as a public authority to decide, once it had the appellant's response, whether a person in his position should be allowed to continue in office to the point where his right to procedural protection was enlarged. Status in office deserves this minimal protection, however brief the period for which the office is held."

For more information about procedural fairness, here is an extract from a decision of the Supreme Court of Canada (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817):

"The duty of procedural fairness is flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker. Several factors are relevant to determining the content of the duty of fairness:

1. *The nature of the decision being made and process followed in making it;*
2. *The nature of the statutory scheme and the terms of the statute pursuant to which the body operates;*
3. *The importance of the decision to the individual or individuals affected;*
4. *The legitimate expectations of the person challenging the decision;*
5. *The choices of procedure made by the agency itself. This list is not exhaustive."*

An investigation under the Policy on Harassment Prevention and Resolution and the Directive on the Harassment Complaint Process is administrative in nature. It is not a judicial remedy (court or tribunal), nor is it quasi-judicial (example: Adjudication under the Public Service Labour Relations Act). Nevertheless, investigators who are responsible for investigating alleged harassment must adhere to the principles of procedural fairness by behaving fairly and equitably towards all of the parties. The importance of procedural fairness is unquestionable; investigators must follow it strictly and at every step in the proceedings within the following principles:

I. The Right to be Informed of the Allegation(s)

The respondent has the right to know the totality of the allegation(s) made by the other party and must be afforded a reasonable opportunity to respond to them. It is generally the role of the

person responsible for managing the harassment complaint process to notify the accused party of the allegations at the outset by providing him or her with a copy of the allegations and an opportunity to respond.

II. Investigator Must be Impartial

The parties have the right to an impartial investigator. Investigators must be neutral third parties with no interest or stake in the case or its outcome. It is imperative that their skills be exercised impartially and independently.

An investigator must refrain from taking part in an investigation should a situation arise where bias or a reasonable apprehension of bias may be perceived by the parties.

A written request by a party that the investigator withdraw from the case because of a real or reasonable apprehension of bias on his part must be presented at the outset of the investigation or as soon as the party has knowledge of circumstances that could justify this apprehension. In other words, the parties may be considered to have agreed to proceed before this investigator by the fact that they have not objected. If a request for the investigator to be removed from the investigation reveals circumstances that could give a reasonable person grounds to believe that the investigator could be seen to have an interest in favouring one party over another or if the investigator demonstrates bias towards one of the parties, the person responsible for managing the harassment complaint process should decide whether it would be appropriate to hire the services of a different investigator to maintain the integrity of the process.

"Justice should not only be done, but should be seen to be done."

III. The Right to be Heard and to Present Evidence

The parties must be afforded the opportunity to present their version of the facts, identify witnesses and submit documentary evidence (documents, cassettes, tapes, electronic files, photographs, etc.).

It is then up to the investigator to decide whether the evidence submitted is relevant and admissible. Any evidence that confirms or refutes incidents related to the allegations should be admitted as evidence.

The investigator may disregard evidence that would be inadmissible in law because of:

- Rules relating to administrative secrecy in the public interest (e.g. national security);
- Laws governing privilege (e.g. lawyers, mediators); and
- Laws protecting the confidentiality of medical records or other documents (e.g. psychologists, physicians, psychiatrists, Employee Assistance Program counsellor).

IV. The Right to be Accompanied

The parties may designate someone to accompany them during the investigation. This person may select a union representative, a spouse, a friend, etc. This person does not represent the party, but is there to assist.

V. The Right to Review Statements to Confirm their Accuracy

Every person who testifies in the investigation should have access to the statements to verify their accuracy. To ensure this, the investigator should ask the witness to sign and date their statement, before the preliminary summary of facts is written and disclosed to the parties.

VI. The Right to Access and Rebut the Findings

Under normal circumstances, the facts will be gathered during an onsite investigation; the parties to the dispute and the witnesses will be questioned in-person. To satisfy the principles of procedural fairness, the parties must be afforded an opportunity to review the statements of the other party and witnesses through the preliminary summary of facts. This document is limited to reporting the facts as gathered by the investigator. This summary is disclosed to the parties, who have a reasonable opportunity to rebut, comment on or correct the information relied on by the investigator before completing the analysis and making the findings in the final report.

The Burden and Standard of Proof

In resolving harassment situations through administrative investigations, the parties must be treated with dignity and respect. The allegations are simply that - allegations. Directly or indirectly, the complainant must establish to the investigator that harassment did, according to the balance of probability, take place. Until that happens, it must be assumed that the harassment did not occur. This is called the burden of proof.

When analyzing the facts, the investigator will base his or her conclusions on the balance of probability. This is the civil standard of proof that an incident was more likely to have occurred than not.

Sexual Harassment

Because sexual harassment does not generally occur in public, in order to make a determination as to whether someone was sexually harassed, circumstantial evidence is considered by drawing inferences from certain behaviour. For the same reason, the credibility of witnesses is even more critical in sexual harassment cases than in any other type of harassment. Cases may be determined based on an assessment of the credibility of the parties and witnesses. Credibility implies that witnesses tell the truth without any attempt to hide or exaggerate the facts, in a straightforward and honest manner.

Further, in cases of alleged sexual harassment similar fact evidence can be used to demonstrate a pattern of behaviour by the respondent, however this is not usually considered in cases of general harassment. This evidence must be used very cautiously and in unique situations where there is limited evidence; it should be similar in nature to the incidents alleged in order to demonstrate a pattern of behaviour.

Abuse of Authority

Abuse of authority is a form of harassment. It occurs when an individual misuses the power and authority inherent in his or her position to endanger a person's job, undermine the person's

performance of that job, threaten the person's economic livelihood, or influence the person's career. It includes intimidation, threats, blackmail or coercion.

Abuse of authority should not be confused with the legitimate exercise of managerial responsibilities, even when it involves actions which may be perceived by the employee as offensive or improper. It is more than just a flawed administrative decision and even mere errors or omissions would not generally meet the threshold of harassment.

Managers have the right to manage the workplace in accordance with governing legislation, collective agreements and policies; this includes imposing corrective and/or disciplinary measures, evaluating and managing performance, managing attendance, approving training and leave requests, among other things. However, the authority conferred upon those designated to manage the workplace is not limitless and managers must exercise their authority legitimately and in good faith.

In making a finding whether allegations of abuse of authority are founded or not, the investigator should consider whether there is any foundation for the actions, observations or conclusions reached by the manager or whether there is evidence of improper intent on behalf of the accused. In order to make a finding of abuse of authority, the conduct must also meet the definition of harassment.

Prepare an Interview Plan

Based on the results of the previous steps and before conducting interviews, the investigator should be aware of which issues will need to be pursued for questioning.

When preparing for interviews, it is important to remember that the objective is to obtain information from individuals that is pertinent to the allegation(s), and that the burden of proof rests with the complainant. For example, if the complainant cannot provide evidence that supports a particular allegation or if there are no witnesses to support the allegation, then the burden of proof never shifts to the respondent and there is no need to investigate that particular allegation any further.

The interview questions should elicit the information from interviewees that can address key investigative areas of interest.

The investigator should identify all the pertinent issues that need to be addressed in preparing the investigation plan and adjust it as required throughout the course of the investigation. The complainant is normally interviewed first, followed by the respondent since they are most closely related to the allegations and will be in a position to provide the most relevant information. Other witnesses should be interviewed in the order of the expected value of their contribution for addressing key investigative questions.

All the parties involved in an alleged harassment situation should expect a professional, transparent, fair and thorough investigation.

Stage Four: Validating the Facts

Reviewing and Disclosing the Information Gathered

Upon completion of the information collection phase, the investigator should have collected information that will permit the formulation of a summary of facts as they relate to each allegation and any other requirements of the mandate.

Assessing the Completeness of the Information Collected

The following questions are useful in assessing the completeness of the information collected:

- Are all of the key investigative issues which were identified in the planning phase adequately addressed?
- For each allegation, does the file contain each party's version of what happened?
- Have all the relevant witnesses been interviewed and their testimony recorded?
- Have all supporting documents been reviewed?
- Is there enough information to begin an analysis?
- Is there a need to go back and collect or verify additional information?
- Have new important questions emerged?

It is suggested that the investigator sort the data according to its relevance to the allegations, group it according to the allegations, distinguish facts from opinions and verify whether there is sufficient and clear information to be able to make a finding as to whether the allegations are founded or not.

The investigator should now be ready to prepare the preliminary summary of facts.

The Preliminary Summary of Facts

Definition of the Preliminary Summary of Facts

Since the gathering of facts has been done through the investigation, the parties do not have the opportunity to hear the other side (*audi alteram partem*). As discussed earlier, procedural fairness requires that each party have access to the version of facts presented by the other party and have the opportunity to respond to them.

To ensure that the parties have an adequate opportunity to comment on the information that will provide the basis for the analysis and conclusions, the investigator will prepare a preliminary summary of facts, setting out the substance of the relevant issues and related evidence. The summary is restricted to presenting the allegations, issues and facts *only*. Its purpose is to provide an objective and logical description of the relevant information that has been gathered.

The preliminary summary of facts will be presented by the investigator to the person responsible for managing the harassment complaint process who will first identify whether there are any gaps, weaknesses or areas that require further investigation, if required. At this stage, it is also important to ensure that the investigator has fulfilled the terms of his or her mandate. Once the person responsible for managing the harassment complaint process is satisfied with the content of the preliminary summary of facts, he or she will distribute a copy to the parties for their

review and comment (once it has been reviewed by the organization to ensure adherence to the Access to Information Act and the Privacy Act).

Stage Five: Analysis and Conclusion

Preparation

After gathering information from the various witnesses, reviewing the files and documents, validating the information gathered through the preliminary summary of facts, and receiving the parties' comments on those facts, the investigator can analyze the information and draw conclusions.

Strong analysis is contingent upon carefully sorting through information which can sometimes be vast and contradictory. How the analysis is carried out is just as important as the information being analyzed. It is vitally important that the investigator weigh all available and pertinent evidence in an unbiased and objective manner.

Extenuating Circumstances and Explanations

To ensure that the investigation is fair and thorough, the investigator should weigh the parties' explanations for each allegation which include aggravating and mitigating circumstances. Without excusing the behaviour, the circumstances may help to explain it and this analysis has an impact on the lens through which the situation is viewed.

Reaching a Conclusion

At this stage of the investigation, the investigator should be in possession of:

- The facts;
- The policies or regulations relevant to the allegations;
- Jurisprudence, if applicable;
- Explanations or extenuating circumstances; and
- Any other relevant information.

The investigator must decide whether the behaviour amounts to harassment. Once the investigator has determined the facts based on the balance of probability, he or she must decide whether there was a breach of the Policy on Harassment Prevention and Resolution in that:

1. The person accused of harassment exhibited **improper and offensive** conduct, including objectionable act(s), comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat; and also including harassment within the meaning of the Canadian Human Rights Act (i.e. based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and pardoned conviction).
2. The behaviour was **directed** at the complainant;

3. The complainant was **offended or harmed**;
4. The person accused of harassment **knew or reasonably ought to have known** that this behaviour would cause offence or harm; and
5. The behaviour occurred in the workplace or at any **location or any event related to work**, including while on travel status, at a conference where attendance is sponsored by the employer, at employer sponsored training activities/information sessions and at employer sponsored events, including social events; and
6. There was a **series of incidents or one severe incident** which had a lasting impact on the individual.

In order to make a finding of harassment, **each** of these elements must be present. If even one of these elements cannot be proven, there will not likely be a finding of harassment.

Depending on the investigator's mandate, once the investigation confirms each of the above-listed elements, the investigator may also determine:

- The exact nature of the behaviour;
- Whether the complainant communicated to the other party his or her discomfort or disagreement with the behaviour;
- Whether the evidence suggests any intent on the part of the respondent to cause offence or harm to the complainant;
- The impact or consequences of the behaviour on the parties;
- In the case of an isolated incident, whether it could be interpreted, in the circumstances, as so serious and with such an impact on the complainant that it meets the definition of harassment set out in the policy.

Determining Whether the Allegation is Vexatious or Made in Bad Faith:

If there is evidence to demonstrate that the allegations are vexatious or made in bad faith, the investigator should establish whether the evidence indicates:

- The allegation was made merely for the purpose of vexing or annoying or embarrassing a person;
- The allegation was calculated to lead to no practical result;
- The probable presence of bad faith on the part of the person making the allegation which can be indicated by an intention to mislead the investigator or the presence of ill-will.

Definitions

Vexatious

Vexatious is defined by the Shorter Oxford English Dictionary as:

"Instituted without sufficient grounds for the purpose of causing trouble or annoyance."

Black's Law Dictionary defines vexatious as:

“Without reasonable or probable cause or excuse. When the party bringing the proceeding is not acting bona fide and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result, such a proceeding is often described as “frivolous and vexatious” and the court may dismiss it on that ground...”

A harassment complaint should not be characterized as vexatious if the evidence demonstrates a reasonable basis for filing and pursuing it. This is one of the reasons why the screening process to determine whether the complaint is admissible is crucial.

Bad faith

The standard for establishing that a harassment complaint was made in bad faith is high. It entails more than just poor judgment or negligence. It implies the conscious doing of a wrong for a dishonest purpose or due to moral underhandedness on the part of the complainant. It is characterized by an intention to mislead.

A complaint can be characterized as vexatious or made in bad faith if no practical outcome would be achieved by its pursuit. In such cases, there may be some indication that the same issues raised by the complainant were addressed by proceedings under another redress process for which a remedy has already been granted.

In determining whether a particular allegation is vexatious or made in bad faith, the investigator should determine whether there is any reasonable ground upon which the complaint can be substantiated. In other words, the investigation should establish whether the filing or the pursuit of an allegation is reasonable in light of the circumstances of the case.

Where there are no Witnesses or Documents

A situation where there are no witnesses or documents presents a real challenge for the investigator. This situation can occur when the alleged incident takes place in private, for example behind “closed doors” or when an employee meets a colleague outside of working hours, which may be the case in some sexual harassment situations.

What should be done when there are no witnesses to corroborate an allegation? One way to broach the subject is to rely on the degree of probability. If other similar incidents have been corroborated by witnesses, it may be more likely that the incident under review occurred. The investigator should carefully consider whether there are sufficient elements to make the alleged behaviour believable.

To determine the likelihood of the allegations, the investigator should consider the following questions:

- Are the facts plausible?
- Do the facts flow logically?
- Are the facts well explained?
- Are the facts sufficiently detailed?

Factors that affect the credibility of the source (witness) include:

- Direct, firsthand knowledge of the allegations;
- Expertise in the relevant subject area;
- Level of maturity;
- Status of the source;
- Relationship between the source and the parties; and
- Consistency or contradictions in testimony.

The Report

The investigator is ready to move to Stage Six – the Investigation Report – once he or she has established whether:

- The alleged conduct occurred, based on the balance of probability;
- There were any underlying factors that may have contributed to the situation (if required by the mandate); and
- The conduct meets the definition of harassment, in accordance with the Policy.

Stage Six: The Investigation Report

Content of the Investigation Report

An investigation report sets out the allegations, a logical description of the facts, an analysis of each incident, and a conclusion. Ideally, the report should be tendered in accordance with the format laid out in Annex 10.

At an earlier stage, the preliminary summary of facts would have already been disclosed to the parties. If the comments from the parties do not justify any additional investigative actions, the investigator writes the investigation report in consideration of these comments. In reading the final report, the person responsible for managing the harassment complaint process must be able to readily understand the allegations, issues, and observations as well as the analysis and conclusions.

At the end of the investigation process and once the person responsible for managing the harassment complaint process receives a copy of the investigation report, he or she will need to review the relevant information and decide whether or not to accept the conclusions of the investigator. To do this, he or she has to be able to make a reasoned decision that is based, among other things, on the facts, analysis and conclusions in the report.

It is imperative that the report present the relevant information gathered through the investigation objectively and logically. The parties will more readily accept a decision that is well-reasoned and clearly written, thereby mitigating the risk that the report will be challenged.

The person responsible for managing the harassment complaint process will consider whether procedural fairness has been respected, the soundness of the facts and the reasonableness of the analysis and the conclusions. It is the responsibility of the person responsible for managing the harassment complaint process to communicate his or her decision to the parties and to disclose the investigation report in accordance with the Directive on the Harassment Complaint Process.

The investigation report will be viewed by at least four people with specific needs and vastly different expectations:

1. The person responsible for managing the harassment complaint process who must approve its content and make a decision to accept or reject its conclusions;
2. The complainant,
3. The respondent; and
4. The manager, in consultation with a labour relations advisor, where disciplinary and/or corrective measures will be imposed.

Stage Seven: Administrative Closure

Submission of the Investigation Report to the Person Responsible for Managing the Harassment Complaint Process

Reviewing the Facts, Analysis and Conclusions

If the person responsible for managing the harassment complaint process does not fully accept or agree with the investigator's findings, he or she should provide a detailed written rationale to the parties explaining why.

Release of the Investigation Report

Responsibility for Release

The person responsible for managing the harassment complaint process is responsible for releasing the final investigation report to the parties. Before the report is released to the parties, it is subject to the provisions of the Access to Information Act and the Privacy Act.

The person responsible for managing the harassment complaint process should inform the parties of his or her decision in writing without undue delay and provide them with a copy of the report. The decision letter constitutes administrative closure of the formal resolution process.

Reactions of the Parties to the Release

Following the release of the investigation report, it is possible that one of the parties will contact the investigator to communicate his or her dissatisfaction. If it relates to the content of the report, the investigator should refer the individual to the person responsible for managing the harassment complaint process.

If the person personally attacks the investigator, he or she should remain calm and demonstrate respect and dignity. If the person makes either implicit or explicit threats, the investigator should take note of them and immediately inform the person responsible for managing the harassment complaint process or if they are criminal in nature, contact local authorities. In the case of an internal investigator who is personally affected by comments made, he or she can also contact a representative from the Employee Assistance Program for support.

Challenges to the Investigation Report

Parties who are dissatisfied with the investigation report may challenge it through different means:

1. By applying for judicial review to the Federal Court of Canada;
 - **From the *Federal Court Law* - Subsection 18.1, Grounds for review**

The Trial Division may grant relief if it is satisfied that the federal board, commission or other tribunal:

 - acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
 - failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
 - erred in law in making a decision or an order, whether or not the error appears on the face of the record;
 - based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
 - acted, or failed to act, by reason of fraud or perjured evidence; or
 - acted in any other way that was contrary to law.
2. By filing a grievance in accordance with the grievance procedure under the employee's collective agreement, if applicable.
3. By filing a complaint with the Canadian Human Rights Commission if a prohibited ground of discrimination was a factor.

Annex 1 - Sample Investigation Mandate

I. Purpose of this Mandate

The purpose of this investigation mandate is to:

- a. Establish the terms and conditions in accordance with which this investigation is to be conducted; and
- b. Outline the authorities of the investigator to interview the parties and witnesses, and to view and collect any information or documents needed for this purpose.

Investigator

Name: [name]

Company: [company]

Person Responsible for Managing the Harassment Complaint Process

Name: [name]

Title: [title]

II. Allegation(s) to be Investigated

Investigation of harassment allegation(s) by [name of the complainant] in regard to harassment allegedly committed by [name of the respondent].

The allegations to be investigated are attached to this mandate.

III. Scope of the Investigation;

[Subject to the provisions in the professional services contract], the investigator shall conduct the investigation of the allegation(s) attached to this mandate.

The investigator will investigate to determine whether there has been a breach of the Treasury Board Policy on Harassment Prevention and Resolution in accordance with the Directive on the Harassment Complaint Process and the accompanying Investigation Guide.

The investigator will conduct the investigation in accordance with the principles of procedural fairness while using his or her discretionary power to conduct the investigation in the manner deemed most appropriate.

The investigator will limit the investigation to the allegations referred by the person responsible for managing the harassment complaint process. In the event that additional allegations are raised during the course of the investigation, such allegations are to be submitted to the person responsible for managing the harassment complaint process to determine whether they should be considered as part of the mandate for the investigation. If these allegations are accepted as part of the investigation, they are to be presented in writing by the person responsible for managing the harassment complaint process to the respondent and the investigator's mandate will be amended accordingly.

IV. Investigation Process

The investigator will review the allegations attached hereto and any additional allegations accepted by the person responsible for managing the harassment complaint process to ensure that all relevant documentation has been identified. The investigator will also review all documentation and responses, as applicable. He or she will then submit an investigation plan to the person responsible for managing the harassment complaint process.

The person responsible for managing the harassment complaint process may designate a person of his or her choosing (such as a departmental harassment advisor) to assist with the administrative aspect of the investigation such as assisting the investigator in arranging interview schedules and meeting locations. The investigator will ensure that the parties have been notified of their right to be accompanied during the investigation process and of the importance of maintaining confidentiality.

The investigator will provide the parties and witnesses with the opportunity to be heard and conduct all interviews in a fair, impartial and professional manner. He or she will ensure that witnesses are asked to sign and date witness statements once they have had an opportunity to review the interview notes to confirm their accuracy.

The investigator will take every reasonable precaution to ensure that the investigative process is carried out with due diligence and respect for the rights of those being interviewed and to perform these duties within the confines of the law.

The investigator will inform the person responsible for managing the harassment complaint process in the event that the parties, the persons accompanying them or the witnesses do not fully cooperate in or jeopardize the process.

V. Reporting:

The investigator will provide the person responsible for managing the harassment complaint process verbal progress reports on the status of the investigation at regular intervals or at the request of the person responsible for managing the harassment complaint process to allow him or her to monitor the timeliness of the process and to ensure that the mandate is being adhered to.

Upon completion of the initial interview phase, the investigator will submit a preliminary summary of facts outlining the evidence and the facts of the case to the person responsible for managing the harassment complaint process.

He or she will then provide the parties with a copy of the preliminary summary of facts, once they have been reviewed by the organization to ensure adherence to the Access to Information Act and the Privacy Act, and provide them with an opportunity to make comments regarding accuracy and completeness and to provide additional relevant information.

The investigator will examine all the information submitted by the parties as well as the other evidence gathered during the investigation. He or she will provide a thorough analysis of the evidence in the investigation report.

The investigator will use the criteria contained in the Policy on Harassment Prevention and Resolution and the Directive on the Harassment Complaint Process, in order to conclude whether there has been a breach of the Policy by establishing whether:

- The allegations are founded in whole or in part; or
- The allegations are not founded.

The investigator will submit the investigation report to the person responsible for managing the harassment complaint process in a timely manner. He or she will complete the investigation report even if the parties or witnesses refuse to cooperate in the investigation process and shall indicate the reason, if any, for such refusal. If applicable, the investigator's report will also include the reasons for which a witness proposed by either of the parties was not interviewed.

Copies of the investigation report will be provided to the parties, by the person responsible for managing the harassment complaint process once the report has been reviewed by the organization to ensure adherence to the Access to Information Act and the Privacy Act.

A final decision to accept or not the conclusions of the report will be made by the person responsible for managing the harassment complaint process based on the findings of the investigation report.

VI. Additional Requirements

(Optional: *The following paragraphs can be inserted and amended based on the specific needs of the organization*)

The investigator will also make a determination on whether the allegations are vexatious or made in bad faith. The investigator will also comment on underlying workplace factors that may have contributed to the situation.

VII. Documentation

Supporting documentation and relevant submissions collected by the investigator will be included and clearly identified as an Appendix to the investigation report.

At the conclusion of the investigation, the investigator will submit the investigation file including all information and documentation collected in the course of the investigation to the person responsible for managing the harassment complaint process.

VIII. Confidentiality and Disclosure

The investigator shall conduct the investigation with the utmost discretion.

The investigator will take every reasonable precaution to safeguard, secure and protect all information, documentation and materials that may come into his or her possession while investigating the allegations.

The person responsible for managing the harassment complaint process will ensure in advance that the parties and witnesses are provided with a copy of the Policy on Harassment Prevention and Resolution and the Directive on the Harassment Complaint Process, and are advised of their rights and responsibilities with respect to the investigation, particularly attendance at interviews, accompaniment and confidentiality.

The investigator cannot guarantee the parties or witnesses that conversations or information communicated during the course of the investigation will remain confidential. Anyone interviewed during the investigation must be informed that his or her name will appear in the investigator's report and that the information provided may be disclosed in the investigation report.

The investigator must compile and communicate all information in compliance with the *Privacy Act and the Access to Information Act*.

IX. Informal Resolution Process

If a request for informal resolution such as mediation is made by one of the parties, the investigator will inform the person responsible for managing the harassment complaint process. If an informal resolution process is commenced to resolve the allegations, the investigation will be suspended by the person responsible for managing the harassment complaint process.

The investigator shall not participate, under any circumstances, in the informal conflict resolution process or attempt to obtain or use information disclosed in the context of an informal resolution process if the investigation resumes.

If the parties do not expeditiously resolve the situation through informal resolution, the person responsible for managing the harassment complaint process will inform the investigator that the investigation will resume. If the parties resolve the situation informally, the investigation will be terminated and all documentation will be returned to the person responsible for managing the harassment complaint process.

X. Timeframes:

It is recognized by all parties that this Mandate may be terminated or extended at any time at the direction of the person responsible for managing the harassment complaint process.

The investigation report will be submitted to the person responsible for managing the harassment complaint process on a date not later than [date].

In Witness Whereof this mandate is accepted and signed, at [city], this [day] day of the month of [month] [20].

[Person Responsible for Managing the Harassment Complaint Process]

[Investigator(s)]

Annex 2 - Investigator's Checklist

- Obtain and review mandate, seek clarification if needed
- Review the written allegations and response to allegations
- Review the applicable policies, legislation and jurisprudence, as applicable
- Develop an investigation plan and provide a copy to the person responsible for managing the harassment complaint process
- Meet with the complainant
- Meet with the respondent
- Explain the parties' rights and responsibilities with respect to the investigation
- Record the parties' statements and have them date and sign them

- Meet with the witnesses
- Record the witnesses' statements and have them date and sign them
- Review and adapt your investigation plan, as needed
- Proceed with further interviews, as needed
- Visit the premises, if relevant and appropriate
- Provide the person responsible for managing the harassment complaint process with periodic verbal progress reports
- Prepare the preliminary summary of facts and submit it to the person responsible for managing the harassment complaint process for onward submission and review by the parties
- Obtain and review comments and submissions from the parties
- Assess whether further investigation is warranted
- Analyze the evidence
- Prepare the investigation report and present it to the person responsible for managing the harassment complaint process
- Submit the investigation file to the organization

Annex 3 - Preparing an Investigation Plan

The following key elements should be considered and included in the investigation plan before proceeding with the investigation.

Definition of the Subject(s)/Issues

- What are the allegations?
- Are there any other questions or points that require clarification?

The Required Elements for Determining a Breach of the Policy

- What elements must be proven to determine that there has been a breach of the Policy?

Logistics

- Where will the interviews be conducted?
- Are there any special accommodations required?

Information Critical to the Investigation

- What documents or records will need to be examined?
- Which witnesses or experts will need to be questioned?
- What is their relevance to the allegations?

- In what order will they be questioned?
- What policies and/or directives will need to be reviewed?

Key Areas of Inquiry

- How will the questions be tailored to each specific event or subject?
- What extent of questioning will be required to determine a particular issue?
- What issues will be likely to require follow-up depending on the answers given?

Order in which the Information Should be Obtained

- In what order should the information be gathered?
- Should some records be reviewed before certain witnesses are questioned?
- Should some witnesses be interviewed before others?

Annex 4 - Interviewing Tips

Introduction

Questioning the parties and witnesses in a harassment situation is a sensitive task. There is an enormous amount of emotion involved; some interviewees may be quite uncooperative, others aggressive. In the absence of familiarity with the person who will be interviewed, the investigator should be cautious and try to anticipate a wide array of possible reactions during the interview. It is imperative that the investigator demonstrate objectivity throughout the interview. The most successful interviews entail gaining the trust of the person being interviewed. The investigator should attempt, as much as possible, to establish a climate of trust as early as possible in the interview. Preparation is key and these interviewing tips are meant to help prepare the investigator.

Throughout the investigation process, the investigator must ensure that procedural fairness is respected and refrain from behaving in a way that could be seen to jeopardize that notion. The role of the investigator is to review the matter in an objective manner. He or she must be prepared to consider all of the versions of the events giving rise to the allegations. At the same time, it is important to consider how the parties and witnesses presented their version of events because their approach and demeanour may affect the way that information is interpreted.

Six Key Questions

Establishing facts is contingent upon obtaining responses to six key questions:

Who? What? Where When? Why? How?

In order for the investigator to be in the best position to answer those questions, he or she should develop a plan that can be used to guide and simplify the interview process. In doing so, it is important to determine beforehand:

- The date, time and place for the interviews;
- The order in which the parties and witnesses will be questioned;
- The questions and the order in which the investigator will ask them for each interview; and
- How much time the investigator intends to allow for each interview so that he or she can prepare a schedule accordingly.

It is important to keep in mind that the plan is only a guide and it is far more important for the investigator to be able to adapt his or her questions or approach as the interview unfolds. For example, a new or unexpected piece of information can shed new light on the situation and may warrant a shift in direction; the investigator can adapt by asking additional questions and requesting clarification or additional details. New information can also mean that the investigator will need to go back and interview the parties or previous or new witnesses.

Understand the Organizational Structure and the Workplace

If the investigator is not familiar with the structure of the organization or with the layout of the workplace and this information is relevant to the allegations, he or she should request an organization chart or floor plan to help situate the parties and understand the location of where the events allegedly occurred. In addition, if deemed necessary, the investigator can do a site visit before the interviews. Whenever practicable, these visits should occur in the absence of employees, outside regular office hours so as not to disturb or distract the employees.

Choose an Appropriate Location

The choice of location for the interviews is critical since it allows investigators to create an atmosphere conducive to trust, comfort and openness. Such locations should be quiet, very private and neutral (i.e. not in one of the parties' offices or at their home).

Establish Contact

The investigator should determine, in advance, whether the interviewee has any special needs that will need to be accommodated during the interview and ensure that they are able to participate in the language of their choice. The investigator should also take this opportunity to remind the interviewee of his or her rights and responsibilities and ensure that they are understood (e.g. information disclosed will not be considered confidential, right to be accompanied, importance of not sharing testimony or allegations with others, etc.)

Explain the Interview Protocol

At the beginning of the interview, the investigator should explain how the interview will be conducted and what is expected from the interviewee. He or she should also verify that he or she clearly understands the purpose of the interview. At this point, it would be a good idea to allow the person to ask any questions they might have.

The investigator should also explain he/she cannot ensure the confidentiality of the testimony because the parties have the right to know what has been said about them and by whom.

Accompaniment

If one of the parties is accompanied by a union representative, a non-represented employee advisor, legal counsel, or any other person of their choice, the investigator should clarify this person's role at the outset of the interview.

If the parties attempt to bring more than one person to accompany them, the investigator should ask why they feel this is necessary and determine whether this presence is justified. The investigator is entitled to request the exclusion of observers if the process will be hindered in some way.

The accompanying person may not answer questions for the person being interviewed or inhibit the proceedings in any way. His or her role is to provide support and guidance to the person being interviewed. The role of advisors can be summed up as follows:

- To help the person they accompany gather and present evidence;
- To help the parties draft their allegations and respond to those allegations;
- To help the person they accompany to determine the appropriateness of informal conflict resolution;
- To make themselves available so that the investigation can proceed in a timely manner;
- To prepare the person they accompany for the interview by helping him or her present the facts in a logical and coherent fashion;
- To attend the interview and provide moral support to the person they accompany;
- To encourage the person they accompany to remain calm and objective and if necessary, request a caucus or an adjournment;
- To help the person they accompany to manage anger or frustration; and
- To review the preliminary summary of facts and ensure procedural fairness has been observed.

Records of the Interview

The investigator should inform the interviewee that he or she will take notes during the interview and explain the reasons for taking notes:

- To ensure a common understanding of what was said;
- To have a record of the exchange;
- To assist in compiling the report; and
- For verification at a later date.

The use of video or audio recording devices is not advisable. This practice is not conducive to building an atmosphere of trust and may serve to intimidate interviewees who are already experiencing stress and anxiety about the interview. Under such circumstances, they may have a tendency to withhold information. Moreover, the investigator must be prepared to provide, upon request, copies of these transcripts which can be very costly and time consuming.

Managing the Interview

The investigator is responsible for the interview and should have some degree of control over the proceedings. However, the investigator cannot guarantee certain factors such as the outcome of the interview, the interviewees' participation or the accuracy of their statements. While the investigator leads the interview, his or her role should consist primarily of listening to the parties and witnesses.

Investigators should demonstrate active listening skills. This could include:

- Showing open body language (e.g. arms uncrossed, facing the interviewee, etc.); and
- Making eye contact and acknowledging comments made by the interviewee (e.g. nodding, verbal cues, etc.).

There may be situations where the interviewee attempts to invoke a strong reaction from the investigator; it is important that the investigator avoid being provoked. The investigator must concentrate on obtaining all of the information that is required to better understand the situation under investigation. If the person being questioned contradicts him or herself or one of the other witnesses or parties, clarifying questions could be asked to help the investigator weigh the information.

During the course of an investigation, it is not uncommon for the parties and the witnesses to demonstrate strong emotions such as fear, stress, anger and frustration. The investigator should know how to recognize these emotions, show empathy (not sympathy) toward the interviewee and re-establish a stable and comfortable atmosphere for the interview. If it is determined that it would not be appropriate to continue the interview or that a break is warranted, either by the investigator or by at the request of the interviewee, the investigator should not hesitate to suspend or reschedule the interview at a time that is mutually convenient.

Questioning

The order and type of questions that will be asked during the interview should be determined beforehand. At the beginning of the interview, it is a good idea to begin with conciliatory questions that are less likely to be invoke strong emotions. After a few introductory remarks, the investigator can begin by asking the interviewee routine questions such as his or her full name, position, group, level, work telephone number, and section within the organization.

At some point in the interview, the investigator should ask the interviewee to describe the incidents or behaviour relating to the allegations and ask him or her to explain any related workplace norms, if deemed relevant. The focus of the investigator should be on obtaining facts

and direct evidence – not hearsay. This is important because the investigation report must reflect the facts.

Generally, the investigator should not share the allegations with the interviewee during the interview. The allegation is the personal information of the parties and their privacy must be respected to the greatest extent possible. In the case where the allegation may have to be disclosed to a witness, the investigator should state that, *“It has been alleged that... Would you please comment?”* Also, the investigator should not reveal information discovered from other sources. Such information may prejudice the response and could violate the privacy of the person who provided it.

Recap

At the conclusion of the interview, the investigator can provide a brief recap to ensure that the person agrees with the investigator’s understanding of what was said. The investigator should also ask the interviewee whether he or she has anything to add.

In addition, the investigator must have the interviewee verify and sign his or her notes to ensure their accuracy. If the investigator prefers to have the interviewee sign a statement at a later date, he or she should inform the interviewee accordingly and have it signed by him or her at this time.

Some Final Tips for the Investigator

- Bring a copy of your mandate to the interview. There may be times when you have to refer to it or even show it, either to identify yourself or to assert your investigative authority.
- Refrain from allowing any interruptions during the interview such as telephones or other electronic devices unless this has been agreed to beforehand.
- For the comfort of the interviewee, ensure that water and tissues are available during the interview and that the room is comfortable and conducive to this type of exchange. For example, consider lighting, seating, noise level, level of privacy, accommodation needs, etc.).
- To the greatest extent possible, schedule your interviews to ensure that you have sufficient time to prepare for the interview, interview the parties and witnesses, complete your notes and reflect on the outcome of the interview. *“Memory is the faculty that forgets.”*
- Number your pages of handwritten notes during the interviews.
- Remember that your notes could be accessed at a later date and so anything you record should be written with this in mind.
- The interviewee is not normally provided with a copy of your notes. This is in part to ensure the integrity of the investigation process.
- He or she will be allowed to review and sign a statement which will then be put on the investigation file.
- At no point during the interview should you exit the interview room and leave your notes or documents unattended.

- Refrain from expressing surprise, distrust or disbelief; maintain objectivity and impartiality.
- In cases where there is tension, fatigue or strong emotions, suggest breaks or spread your interview over more than a day.

Annex 5 - Interview Protocol

At the Beginning of the Interview:

1. Welcome the interviewee and the person accompanying him or her (if present), noting the latter's name in the file.
2. Provide a brief explanation of the context of the investigation, taking into account that the allegations should not be shared with the witnesses as they are confidential and considered to be the personal information of the parties.
3. Explain the role of the investigator; his or her neutrality and impartiality with regard to the allegations, and the requirements of the mandate (have a copy of the mandate).
4. Confirm that the interviewee has been informed of his or her rights and obligations under the Policy. If interviewing the respondent, confirm that he or she has received a copy of the allegations and has been invited to respond to it in writing.
5. Inform the interviewee that all relevant information communicated during the interview will be documented and that no information can be considered confidential in the context of the investigation. Furthermore, witnesses cannot be given anonymity.
6. Explain how the interview will be conducted and the roles and responsibilities of any person accompanying the interviewee, including the importance of discretion in relation to the information revealed during the interview.
7. Explain the process of validating the notes taken by the investigator during the interview. For example will they be presented to the interviewee at the end of the interview for his or her signature or will they be transcribed and presented for validation and signature at a later date?
8. Ask the interviewee to provide his or her title, position and brief work history (if relevant), as well as their working relationship with the parties. This information should be recorded in the investigator's notes.
9. Permit the interviewee the opportunity to ask questions about the interview and subsequent process.
10. Ask the interviewee if he or she is ready to proceed, and ask the questions.

At the End of the Interview:

1. Ask the interviewee if he or she has any questions or anything to add.
2. Remind him or her about the obligations of confidentiality and discretion that are essential to a fair investigation procedure for the parties and the importance of not discussing the allegations or the interview with the parties or any other person.

3. Make any necessary arrangements to meet at a later date, if necessary, so that the interviewee can review and sign his or her statement.
4. If another interview will be required, schedule the interview at a time that is mutually convenient.

Annex 6 - Note Taking

Note Taking

Remember that much of the information collected in the course of the investigation is subject to the Access to Information Act and the Privacy Act and may be accessed by the parties at a later date. The investigator must be careful to only record facts. Moreover, the persons interviewed can expect to review their statement as recorded by the investigator, to confirm its accuracy, prior to submission of the investigation report.

During the interview, the investigator should weigh the information provided by the parties and witnesses. In gathering the evidence, the investigator should be able to weigh the importance of the information provided. For example, is it direct evidence, opinion or hearsay? Gaps or weaknesses in evidence will require further investigation before accurate conclusions can be drawn.

The investigator's notes are of vital importance to the investigation. What follows is a list of considerations that should be taken into account in recording notes so as to avoid complications following an investigation:

- Subject to the Access to Information Act and the Privacy Act, notes may be accessed by the parties;
- The collection and recording of notes should reflect the principles of procedural fairness;
- Poorly written notes, which can be characterised by a lack of detail, bias or inaccuracies, may lead the participants to question the integrity of the process;
- Poorly written notes may have to be corrected and could lead to challenges, thereby throwing the investigative process into disrepute; and
- Poorly written notes will prove difficult to interpret and analyse for the purpose of writing the preliminary summary of facts.
- Good quality notes can be characterized as:
 - Written in neutral language;
 - Organized coherently to facilitate the writing of the preliminary summary of facts;
 - Signed by the interviewee, if applicable; and
 - Bearing the security designation of PROTECTED "B".

What are Some Suggested Note-Taking Practices?

- Identify the witness' name, address, telephone number, fax number and e-mail address, as applicable;

- Clarify the witness' title (both at the time of the alleged incidents and at the present time) and his or her role within the organization;
- Specify which party identified the witness;
- Identify the issues discussed including the date, time and location of any alleged incidents;
- If the witness relies on documentary evidence or makes reference to a document, include this document in the file, if appropriate; and
- Determine whether the evidence provided by the witness is direct evidence, opinion or hearsay and record the facts.

What Note-Taking Practices should be avoided?

- Recording your personal opinions or value judgments about the witness or information that was disclosed to the investigator.
- Recording too much information, including irrelevant information.
- Overuse of abbreviations, acronyms or symbols. The information should be easily understood by a third party.
- Attempting to diagnose the physical or psychological health of the person being interviewed; investigators do not possess such expertise.

Annex 7 - Analyzing the Facts

Compare Similarities and Differences

All statements made by interviewees should be compared to identify similarities (those accounts which are strikingly similar) and differences (those accounts which bear major discrepancies).

The investigator will need to gain a clear understanding of the facts, based on the evidence compiled. In order to do this, the investigator will compare the statements provided by the parties and the witnesses to uncover where the similarities and the differences lie.

While the various statements of the alleged incidents may bear certain similarities, it is equally possible for the perceptions of those involved to vary considerably. If there are important differences in testimony, the investigator should weigh it according to the validity or strength of the information (e.g. direct, firsthand evidence vs. hearsay, personal perceptions) and the credibility of the witnesses. If the statements of the parties are in conflict, the investigator should review the witnesses' versions to determine whether they serve to support or refute either party's statement and to what extent. For example, if a majority of the witnesses interviewed support the allegations, the investigator may reasonably conclude that the allegations are more than likely to have occurred. However, the number of witnesses that support a version of events should not be the only consideration; the investigator should also consider whether their testimony is credible and whether there is other supporting evidence.

Create a Chronological Description of Key Evidence

A chronological description will help establish the sequence of events related to the allegations and can be a useful tool for preparing the analysis. The information should be organized in chronological order according to the allegations and the evidence that either supports or refutes these allegations.

Once completed, the description should be reviewed to identify any gaps or inaccuracies which may require further investigation.

The following chart can be used to record the chronological description related to the allegations and can prove to be a useful tool in preparing the analysis.

Date & Time	Alleged Incidents	Description of Evidence
------------------------	--------------------------	--------------------------------

Weigh the Information

Once all of the information is collected, it should be weighted against the following considerations:

- How important is the evidence?
- What is the relevance of the fact to the allegation?
- Does it prove or disprove the allegation?
- If the evidence is not directly related to the allegation, does it reveal other important information or lead to another source?
- Are there gaps or inaccuracies that require further investigation?

It is important to note that the fact that evidence may not appear to be relevant at the time that it is revealed to the investigator does not mean that it may not gain importance at a later stage in the investigation.

In determining the accuracy of evidence provided, the investigator should identify whether there is conflicting information and seek additional sources to establish whether the evidence is valid or not. The investigator will need to reconcile the data while also taking into consideration the fact that it is natural for witnesses to observe and remember situations differently given the subjectivity of the perceptions of each individual. The more time that elapses, the more difficult it is for people to recollect events clearly.

In determining the credibility of the witness, the investigator should consider whether the witness has provided direct or first hand knowledge of the incidents or whether the witnesses is providing a personal opinion or repeating hearsay. A credible witness is one that is believed to be

telling the truth without any attempt to hide or exaggerate the facts, in a straightforward and honest manner.

In examining the facts, the investigator should examine each piece of information individually and as a whole. Information that could be considered weak if viewed on its own might be strengthened by supporting evidence. On the other hand, evidence that appears strong on its face can be weakened by the provision of contradictory evidence.

Important Principles for the Investigator to Consider

Even if the body of information contains significant contradictions or if there is a lack of convincing evidence, the investigator is still required to draw a conclusion. In order to determine that the allegation is founded, the evidence must demonstrate on a balance of probability that the allegation is likely to have occurred. In the absence of such evidence, the investigator must conclude that the allegation is not founded. The complainant bears the onus of proof and the standard of proof is “more likely than not”, in assessing if that person has been subjected to workplace harassment. Drawing such conclusions can be especially challenging in situations where two people present different versions of incidents. However, two conflicting views should not necessarily lead the investigator to conclude that the allegations are not founded. Rather, each account should be carefully assessed in light of all of the other information and evidence collected. Facts analysis is more than a counting game; the number of witnesses who can support a version of events should not be the only consideration. At times, fewer strong pieces of information may outweigh a larger number of weaker pieces of information. The investigator must be able to account for and explain the different weight allotted to the evidence collected.

Furthermore, when analyzing the evidence the investigator should avoid trying to read into the motives of the person against whom the allegations are made, unless there is evidence to demonstrate that malicious intent was indeed a factor. In situations involving allegations of abuse of authority, the intent of the manager may be an important factor in determining whether he or she harassed a subordinate. For example, if the manager was carrying out his or her managerial responsibilities in an appropriate manner with no express intent to harm his or her subordinate but rather to achieve a legitimate performance management objective; this should be taken into account in determining whether his or her actions constituted harassment.

In most cases, the intent of person alleged to have harassed another should not be a factor in determining whether harassment occurred. While the intent to harass another individual may be an aggravating factor for the manager in determining appropriate corrective and/or disciplinary measures, the investigator should not be overly concerned with this aspect of the allegation. The investigator must simply apply the criteria identified in this Guide to determine whether the behaviour meets the definition of harassment.

Identify Areas that Require Further Inquiry

The investigator should ensure that he or she has collected the information required by the Mandate, including information to support or refute each individual allegation. In the absence of this, the investigator will need to determine the reason for the lack of information – e.g. lack of

sources, limited scope of questioning or witnesses, poor understanding of the issues or allegations, etc.

If collecting further information is not feasible, the investigator will have to describe what information is lacking and how it affects the outcome of the investigation. If the evidence does not demonstrate on the balance of probability that an allegation is founded, it should be deemed unfounded in accordance with the burden and standard of proof required in harassment situations.

The following table may prove useful in helping the investigator reconcile evidence that is conflicting or inconclusive. It can be completed for each allegation in order to identify the discrepancies or gaps in evidence.

Consolidated Analysis						
	Allegation #1	Similarities	Differences	Explanations	Factual vs. Perception	
	Version				Direct Knowledge of Events	Status of Source
Complainant	<i>Alleges harassment</i>					
Respondent	<i>Denies the conduct</i>					
Witness #1	<i>Saw the alleged conduct</i>				Yes, was in the room	
Witness #2	<i>Did not see the alleged conduct</i>				No, was in the hallway	
Documents	<i>None used</i>					
Physical Information	<i>None used</i>					
	Allegation #2	Similarities	Differences	Explanations	Factual vs. Perception	
	Version				Direct Knowledge of Events	Status of Source
Complainant	<i>Alleges harassment</i>					
Respondent	<i>Denies the conduct</i>					
Witness #1	<i>Saw the email</i>				After the fact	
Witness #2	<i>Saw the email</i>				After the fact	
Documents	<i>Email</i>					
Physical Information	<i>None used</i>					

Annex 8 - Preliminary Summary of Facts

[Name of the Organization]

PROTECTED "B"

File No. -

Preliminary Summary of Facts

Further to harassment allegations made by [Name of the complainant, title, section, division] regarding [Name of the respondent, title, section, division], this preliminary summary of facts is

submitted in accordance with the terms and conditions of the mandate assigned to the below-mentioned investigator.

[Investigator Signature]

[Name of the investigator]

[Date]

Body of the Summary

The interviews were held at (location) between (dates) and the following persons were interviewed:

- The complainant [name, title, organization], accompanied by [name, title, organization];
- The respondent [name, title, organization], accompanied by [name, title, organization];
and
- The witnesses, [name, title, organization].

The following documents were reviewed:

- The allegations of harassment;
- The organization chart; and
- The Policy on Harassment Prevention and Resolution and the Directive on the Harassment Complaint Process

Mandate

The first paragraph of the preliminary summary of facts indicates the basis upon which the investigation is conducted and provides information about the parties.

Example:

“This investigation is conducted under the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process, pursuant to allegations of workplace harassment made by [name and title of complainant] regarding [name and title of respondent.]”

The investigator then describes the mandate and the name of the person responsible for managing the harassment complaint process.

Example:

“On [date], [Name of person responsible for managing the harassment complaint process], assigned to [Name of investigator] the mandate to investigate allegations of workplace harassment between the parties named above. This investigation was conducted according to the Policy on Harassment Prevention and Resolution and the Directive on the Harassment Complaint Process.”

Background

The purpose of this section is to provide general information about the allegations. The information must be factual and relate directly to the allegations. Usually, it contains information such as general data about the parties, the workplace, a brief background of the situation, a list of witnesses and, if necessary, a reference to an organization chart. For example, the investigator might situate the parties in relation to the organization chart and describe their working relationship with each other. In addition, the investigator could summarize the allegations including any preceding incidents or events and the nature of the allegations, the reported impact on the complainant.

Preliminary Objections (if applicable)

During the interviews with the parties, the investigator may receive preliminary objections from them. It is recommended that the investigator discuss these objections with the person responsible for managing the harassment complaint process and address these objections accordingly. For the most part, such objections should not delay the fact gathering process. However, if the objections raised concern over the application of procedural fairness, such as an alleged breach of impartiality, the investigator must promptly deal with it in conjunction with the person responsible for managing the harassment complaint process.

The Allegations

The allegations must reflect those put forth by the complainant which would have accompanied the investigator's mandate, and any additional allegations approved by the person responsible for managing the harassment complaint process and reviewed by the respondent.

The Purpose of the Investigation

Clearly identify the issue that is to be decided through investigation.

Example:

"Did [Name of the respondent] harass [Name of complainant] in the workplace?"

The Facts

This part can vary in length and detail depending on the nature and complexity of the allegations.

With all this information in mind, the investigator should write the summary in a way that gives the reader enough information about each allegation in a way that is easily understood and logical. The preliminary summary of facts must present both parties' version of the facts as well as the witnesses' testimony. It must also present any relevant information obtained through documentary evidence.

The role of the investigator is not to repeat verbatim every single piece of information communicated by the parties and witnesses in the course of the investigation but to sort through the information and filter it according to its relevance to the allegations. He or she must separate

what is relevant from what is not, group the information by allegation and distinguish facts from opinions. Any information that does not specifically relate to the investigation but warrants attention from management should be brought to the attention of the person responsible for managing the harassment complaint process at the earliest opportunity and should not be included in the preliminary summary of facts unless specifically instructed by the mandate.

The investigator must set aside evidence that would be inadmissible in law by reason of:

- Rules related to administrative secrecy in the public interest (e.g. national security);
- Laws governing privilege (e.g. client-solicitor); and
- Laws protecting the confidentiality of medical records or any other documents from medical practitioners.

To ensure that adequate information is included in the preliminary summary of facts, the investigator should consider whether:

- There are sufficiently detailed notes of the statements of the parties and witnesses;
- The appropriate persons were interviewed and whether the right questions were asked; and
- There is sufficient information upon which to conclude whether harassment did or did not occur.

If there are gaps in information, the credibility of the investigation will be significantly affected and every effort should be made to resolve these issues before the submission of the preliminary summary of facts.

Submission of the Preliminary Summary of Facts

The investigator submits the preliminary summary of facts to the person responsible for managing the harassment complaint process. Once it has been reviewed by the organization to ensure adherence to the Access to Information Act and the Privacy Act, the latter will distribute a copy of the summary to the parties. This will allow them each an opportunity to make written submissions. For ease of reference, a sample letter to the parties disclosing the preliminary summary of facts is included at the end of this Annex.

Upon receipt of the summary, the parties are given a reasonable amount of time (10 working days) to respond to the information provided therein. The preliminary summary of facts is not meant to disclose every detail of the investigation, but rather the key facts that will form the basis of the decision as to whether the harassment allegations are founded or not; this will assist both the investigator and ultimately the person responsible for managing the harassment complaint process in rendering a decision.

If further investigation is required following the submission of the preliminary summary of facts, the investigator will be required to disclose any new or additional information that is obtained in the course of this investigative process if it will be used to substantiate the final report. Again, the parties should be given an opportunity to respond to this additional information.

After considering the parties' response to the preliminary summary of facts, the investigator analyzes the information and then prepares the investigation report which includes the analysis and conclusions of the investigation.

SAMPLE LETTER SUBMISSION OF THE PRELIMINARY SUMMARY OF FACTS TO THE PARTIES

PROTECTED "B"

[File No. -]

[Name of party]
[Party's address]

Dear [Name of party],

This is further to the allegations of workplace harassment by [Name of complainant] concerning [Name of respondent].

Please find attached a copy of the preliminary summary of facts which sets out the facts gathered through the investigation. The attached summary is a protected document that must be treated as confidential and shared only on a need-to-know basis.

If, after reviewing the summary, you wish to provide further information or dispute any information contained in the summary, you are asked to provide these comments in writing to the undersigned no later than [ten working days]. If your comments are not received by this date, you will be deemed to be in agreement with the summary. A copy of this summary has been provided to [Name of the other party] who has been given the same opportunity to comment.

Any submissions by the parties within the allotted timeframe will be taken into consideration before conclusion of the investigation and submission of the final report which will be forthcoming.

If you would like to obtain further information about this matter, please do not hesitate to contact me.

Yours truly,

[Name of the person responsible for managing the harassment complaint process]
[Title]
[Telephone number]

Attachment

Annex 9 - Report Writing

Characteristics of a Good Report

These objectives should be applied throughout the report-writing exercise, in order to ensure that the investigation report is concise and readable.

- The report must achieve its objective – to respond to the requirements of the mandate and answer the questions raised (i.e. are these allegations of harassment founded or not?).
- The report must be designed to meet the needs of the person responsible for managing the harassment complaint process.
- The report must be logical, sufficiently detailed and accurate. It should not include extraneous or irrelevant information or unsubstantiated opinions. The person responsible for managing the harassment complaint process must be able to rely on the facts set out in the report and render a decision accordingly.

The investigator should ensure that the structure of the report is clear for the reader so that he or she can easily access and reference the information. The pages should be clearly numbered, dates and witnesses should be accurate and there should not be any spelling or grammar mistakes. Failing to write in a clear and coherent fashion may cause the person responsible for managing the harassment complaint process to be concerned that other critical errors in the content or methodology could have occurred.

To the greatest extent possible, the investigator should rely on simple and direct language to describe the facts and to develop the analysis. The person responsible for managing the harassment complaint process will expect the facts to be clearly spelled out and the analysis to be sound.

As a general rule, the investigator should avoid using:

- Ambiguous language;
- Abbreviations or acronyms;
- Overly long or complex sentences;
- Characterisations or descriptions which could denote bias; and
- Medical, legal or overly technical terminology.

Finally, it is a good idea for the investigator to set aside the report for a day or two and then read it anew. This will enable him or her to more readily flag any gaps or errors. Before submitting the report the investigator should consider the following questions:

- Would someone unfamiliar with the situation be able to easily understand the report?
- Is the report coherently and concisely written?
- Does the report satisfy the requirements of the mandate?

For a sample layout of the investigation report, please consult [Annex 10](#) of this Guide.

Annex 10 - Investigation Report

PROTECTED “B”

File No: [...]

Cover Page

Investigation Report

Complainant: [complainant]

Respondent: [respondent]

Nature of the allegations:

(This a brief description of the type of allegations being made)

The allegations are attached to this report as Annex 1.

The mandate, including any subsequent amendments, is attached to this report as Annex 2.

The complainant was sent the preliminary summary of facts on:

Comments on the preliminary summary of facts received on:

The respondent was sent the preliminary summary of facts on:

Comments on the preliminary summary of facts received on:

The parties' responses are attached to this report as Annex 3.

Body of the report

Allegation(s)

[Name of the complainant] alleges that [Name of the respondent] harassed him/her in the workplace.

The allegations that formed the subject of this investigation are as follows:

(Reproduce the allegations)

Mandate

(The first paragraph of the body of the report indicates the basis upon which the investigation was conducted.)

The Investigation Procedure

(The next four sections essentially repeat the information produced in the preliminary summary of facts.)

The interviews were conducted in [location] from [date] to [date] at which point the following persons were interviewed:

The parties to the dispute:

[Name of the complainant] accompanied by [Name, title and organization of the person accompanying him or her].

[Name of the respondent] accompanied by [Name, title and organization of the person accompanying him or her].

The witnesses:

[Names, titles and organizations of the witnesses]

The following documents were considered:

Preliminary Objections

(If applicable)

Facts

In addition to the facts that appear in the preliminary summary of facts, the comments received following disclosure of the summary may also be included in the investigation report. It is the investigator's responsibility to determine which elements should be included. However, the comments of the parties should be included in this report if, following the responses from the parties to the preliminary summary of facts, the investigator had to reopen the investigation.

Analysis

The analysis section is found only in the final investigation report. The analysis brings together all of the salient evidence. The analysis should start with the description of the criteria to be met under the definition of Policy in order to conclude that there has been a breach of the Policy. The analysis is a critical component of the report; it requires sophisticated analysis on the part of the investigator who analyzes the evidence adduced and the arguments made by the parties, as well as any other relevant information gathered in the course of the investigation. The analysis must explain how the information gathered was assessed, and why the investigator reached a particular conclusion. Each allegation should be identified and analyzed separately and as a whole if there is an attempt to demonstrate a pattern of repetitive behaviour.

Note: Comments related to underlying workplace factors that may have led to the allegations can be included in the report if so required by the mandate.

Conclusion

In determining whether the alleged conduct constitutes harassment, the investigator must determine whether the conduct meets the criteria set out in the Policy.

For example:

1. Allegation *[Identify the alleged conduct]*

a. Evidence/Facts

"The evidence indicates that..."

b. Analysis

Example: "The conduct was improper in that...It was directed at and offensive to the person alleging harassment...the person knew or ought reasonably to have known that this conduct would cause offense of harm... it occurred within the workplace. Therefore, the allegation is founded."

Or

"The conduct was not improper in that... Therefore, the allegation is not founded."

2. Allegation *(if applicable)*

a. Evidence/Facts

b. Analysis

Conclusions

In this section, the investigator summarizes his or her findings and draws conclusions with supporting rationale for each individual allegation. Investigation reports should include a section with conclusions to summarize the main points and highlight the essential information of the report. The conclusions are often considered the most helpful element of the report, because they succinctly clarify the findings.

With respect to the allegations, the findings should never be inconclusive. If the investigator determines that there is not sufficient evidence to conclude that the allegations are founded or partially founded, the investigator must find that the evidence does not support the allegations, consistent with the required burden and standard of proof.

The conclusions on each allegation must give readers a clear understanding that:

- on the balance of probabilities, the evidence available does (or does not) support the allegation(s);
- and if supported, the conduct does (or does not) satisfy the criteria for harassment as per the Policy.

The conclusions must not contain any surprises, that is, they must all relate to the allegations and evidence contained in the report. The conclusions must be coherent (logical and easy to follow), clear (written in plain language), concise, and appropriate to the facts as stated.

Example: "Given the above-noted evidence and in light of the available information, I conclude on the balance of probability that the allegations of harassment in the workplace made by [Name of the complainant] regarding [Name of respondent] are founded/not founded."

If the mandate required the investigator to identify issues, the investigator would also need to include this finding in the investigation report.

Example: It appears that roles and responsibilities of the parties are confusing and might be source of conflict between them. There seems to be an overlap in responsibilities which generates a conflict which has been ongoing for months.

Note: The investigator's report does not contain recommendations on what administrative, corrective/ restorative, and/or disciplinary action should be taken.

Investigator's Closing Declaration:

I declare that, in conducting this investigation, the rules of procedural fairness were observed. I ensured that the parties were reminded of their rights and obligations with respect to the investigation process and gave all those involved, including witnesses, the opportunity to verify their statements. I also declare that I took into account all the comments made by the parties in regard to the preliminary summary of facts in my assessment of this case and in the conclusions presented above.

[Signature]

[Date]

Annex 11 - Content and Disclosure of Harassment Investigation Reports

This information is intended to assist in determining the type of information that should be disclosed or withheld during the course of an investigation conducted under the Policy.

In accordance with the Policy on Harassment Prevention and Resolution and the Directive on the Harassment Complaint Process, the parties to the harassment allegations (complainant and respondent) may expect to:

- Receive information related to the allegations in writing;
- Review a copy of the preliminary summary of facts for comment prior to the investigator's completion of the final report; and
- Be informed in writing of the outcome of the investigation and to receive a copy of the final report.

This means that, during the complaint process, these parties can generally expect to access their own personal information, which includes comments made about them by other individuals, as well as any other information (personal or otherwise) which is relevant to the investigation, the disclosure of which is consistent with resolving the complaint and ensuring a fair process.

Investigators should also be mindful that the information that they collect and record during the course of the investigation is subject to the *Access to Information Act* and the *Privacy Act* and may be accessed by the parties and other individuals (subject to limited exceptions). Therefore, investigators should generally not make promises of confidentiality to any of the interviewed parties.

Moreover, investigators should not include the following type of data in their investigation reports, unless it has a direct bearing on the outcome of the investigation:

- Private family, financial or medical data related to the parties involved in the allegations;
- The use of counseling services;
- Financial or other medical repercussions;
- Effects on other relationships;
- Personal identifiers (Social Insurance Numbers, Personnel Record Identifiers);
- Home addresses or phone numbers; and
- Any other data that has no bearing on the outcome of the investigation.

Failure to abide by this will require severing of the reports before copies may be provided to the parties to the harassment complaint in accordance with the Policy.

Annex 12 - Person Responsible for Managing the Harassment Complaint Process Checklist

Upon receiving the investigation report and before releasing it to the parties, the person responsible for managing the harassment complaint process should ensure that the following elements, including those which ensure procedural fairness, are present:

- The requirements of the mandate are sound and they have been fulfilled;
- The respondent was informed of the allegations;
- The investigator is independent and has no vested interest in the outcome of the investigation;
- The investigator approached the investigation with an open mind and did not prejudice any of the parties;
- The language used is impartial and unbiased;
- The parties were given an opportunity to be accompanied or assisted during the investigation;
- The parties were made aware of statements made about them;
- The parties were given an opportunity to provide corroborating evidence;
- The parties were given an opportunity to comment on adverse statements made by the other party and witnesses;

- The parties were given an opportunity to clarify contradictions in evidence;
- The methods used to gather facts and the presentation of the facts are sound;
- The key witnesses have been identified and interviewed;
- All relevant documents and policies have been examined;
- The key investigative issues have been thoroughly explored (i.e. who, what, where, when, why, how);
- The investigator properly identified gaps and challenged inconsistencies in evidence;
- The investigator filtered the information and only included information that directly relates to the allegations;
- The onus and burden of proof have been properly understood and applied;
- The degree of proof is sufficient to conclude that an allegation was more likely or less likely to have occurred (i.e. based on the balance of probability);
- The analysis and findings are based on the facts which have been disclosed to the parties;
- The analysis and findings are logical and relate directly to the allegations;
- The investigation report is concise and is not a complete retelling of the investigation;
- Spelling and grammar are correct and there are no critical inaccuracies (e.g. names of witnesses, dates, locations, terminology);
- The investigation report is well organized (i.e. evidence, analysis, conclusion);
- The investigation report does not contain information that has no relevance or bearing on the outcome of the investigation;
- The investigation report meets the requirements of the applicable access to information and privacy laws;

If any of these elements are in doubt, the person responsible for managing the harassment complaint process should contact the investigator to discuss and such shortcomings should be rectified.

Guidelines

for

Becoming a Professional Standards (PS) Investigator

Stage 1:

GENERAL SCREENING QUALIFICATIONS

Significant and recent experience in conducting criminal investigations through either the criminal investigations or intelligence programs in the CBSA. This base allows for a smoother transition into a PS Investigator position, as employees should already have acquired a strong skill in intensive interviewing techniques and will have significant operational experience. Employees will then be able to transition more easily, by focusing on standard operating procedures that are utilized by Professional Standards.

Recent experience, in support of investigative findings, for each of the following three: conducting complex interviews, researching issues and writing complex reports.

Recent experience presenting investigation findings to management.

Knowledge of the Canada Border Services Agency's Code of Conduct.

Ability to interpret and explain legislation and policy

Ability to analyze information from multiple sources

Ability to communicate effectively in writing

Ability to communicate effectively orally

Ability to organize work, determine and set priorities in pressure situations

Ability to conduct an interview using varying techniques

Integrity

Reliability

Initiative

Adaptability

Discretion

Stage 2:

ON THE JOB MENTORING

- a) New Investigators will shadow an experienced Senior Investigator from start to finish of a newly assigned investigation. This will include the planning phase, interview phase and also the report writing phase where the experienced Investigator will discuss the structure of the report as well as how to identify crucial content and content that is not essential to the investigation. This will also allow the Senior Investigator to assess the new Investigator's progress in their understanding of a typical PS investigation.

Throughout the investigation, meetings will be held with the Deputy Director PSI and the Investigators to discuss progress on the new Investigator's understanding of the process.

- b) The new Investigator will then be assigned to another Senior Investigator and will once again be paired up and repeat the same process as in the first instance. The purpose of this being to get an appreciation of a different style and use of different investigative techniques.
- c) Finally, the new Investigator will lead their own investigation, but will be shadowed by a third Senior Investigator from the planning phase to the report writing phase. At the completion of the investigation, both new and Senior Investigators will meet with the Deputy Director to ensure that the new Investigator is ready to conduct the next investigation on their own, or to identify if further mentoring/training is required.

Stage 3:

Formal Training Requirements

- 1) Each new Investigator should take (or already have taken) an Interviewing Skills course (3-5 days in length) such as "Reid Interviewing Techniques" or similar accredited law enforcement interviewing techniques course through the RCMP or other accredited law enforcement agency. This course should be scheduled within the first 6 months of joining PSI.
- 2) Each Investigator should take the US Immigration and Customs Enforcement (ICE) Office of Professional Responsibility-Special Agent Training course. This is a two week course specially designed for training of new Professional Standards Investigators. This course should be scheduled within the first 12 months of becoming a PS Investigator.



Appendix B

Comptrollership Manual – Security Volume Professional Standards Investigations

Standard Operating Procedures For conducting a Professional Standards Investigation

These standard operating procedures take effect on January 30, 2015.

All activities relating to a Professional Standards investigation must be carried out in a professional manner and with discretion.

1. Planning the Investigation

The investigator is required to:

- fully understand the nature of the allegation, suspicion or security incident;
- confirm the purpose of the investigation and the persons involved;
- confirm the respondent is an active employee of the CBSA;
- confirm the steps to be followed in the investigation;
- determine the order in which the interviews will take place;
- prepare questions to be asked during each interview; and
- estimate the time required for, and location of each interview.

Generally speaking, the investigator will interview the complainant first to ensure a good understanding of the allegation or suspicion. Any identified witnesses will then be interviewed. The respondent is usually the last to be interviewed.

2. Conducting the Investigation - Interviews

(a) Prior to a Witness Interview

Within a reasonable time in advance of the interview, the investigator should contact each witness and, after clearly identifying themselves, advise the witness:

- why an interview is required;
- to bring to the interview any relevant information or documentation;
- that the matter is confidential and is not to be discussed with any person;
- that they will be required to sign a non-disclosure agreement at the beginning of the interview;
- the time and location of the interview; and
- that they may have an observer present with them and that this person must be an employee of the CBSA and must be identified to the investigator prior to the date of the interview



If the Investigator feels that advanced notice to a witness may compromise the investigation, jeopardize the safety of any person or jeopardize any evidence in any manner, it need not be provided.

Generally speaking, the witness should be given a reasonable period of time to gather any relevant information or documentation.

(b) Prior to the Respondent Interview

Within a reasonable time in advance of the interview, the investigator should contact the respondent and, after clearly identifying themselves, advise the respondent:

- of the allegation or suspicion against them;
- that a formal interview is required;
- to bring to the interview any relevant information or documentation;
- the time and location of the interview;
- that they may have an observer present with them and that this person must be an employee of the CBSA and this person must be identified to the Investigator prior to the date of the interview.

If the investigator feels that advanced notice to the respondent may compromise the investigation in any manner, it need not be provided.

Generally speaking, the respondent should be given a reasonable period of time to gather any relevant information or documentation.

(c) Location of the Interview

Whenever possible, an interview of an employee, either a witness or the respondent, should be conducted in a quiet and discreet office in a CBSA facility. If the interview is to take place at the interviewee's residence (as in the case of witnesses who are members of the public) or in a public location, investigators must follow basic courtesies and show appropriate respect for the environment.

Members of the public should be interviewed in a neutral location. Their work environment is only suitable if they approve of this location. Appropriate measures will be taken to ensure the safety and well-being of the Investigator.

(d) Conditions During the Interview

Prior to the commencement of the interview, employees will be asked to remove their duty equipment, including their Oleoresin Capsicum (OC) spray, baton and duty firearm.

All electronic devices such as laptops, cell phones, audio/video recorders, and personal communication devices must be turned off.



The only electronic devices permitted during the interview are those used by the Investigator.

(e) Observers

Observers must be employees of the CBSA. They must sign a non-disclosure agreement and cannot act in a union representative capacity. Observers are not allowed to participate in the interview.

(f) Administrative Cautions

All persons interviewed (the interviewee) are to be informed of the following:

- The reason for the interview.
- The mandate given to the investigator.
- The interview will be recorded by the investigator who will also take notes.
- They are required to cooperate and assist in the conduct of the investigation and answer truthfully all questions posed by the investigator.
- While only respondents may take notes, they must be safeguarded and cannot be shared with anyone, under any circumstances; failing which disciplinary action may be taken.
- Any notes taken during the interview are subject to the *Access to Information Act* and the *Privacy Act* and must be submitted if an ATIP request is received.
- The investigator will record whether the respondent is taking notes.
- The taking of notes by a respondent must not be obstructive to the flow of the interview.
- They will be asked to review the investigator's notes for accuracy and, if required, corrections will be made when clarification is required.
- They will be asked to sign the last page of the investigator's notes, and initial every page of the investigator's notes.
- The information provided during the interview may be included in the formal investigation report provided to the Director or Director-General of the witness.
- Any information provided relating to a personnel security screening matter of any kind, may be referred to the Personnel Security Screening Section for follow-up action.
- Any information provided during the interview may be accessible in accordance with the *Access to Information Act* and the *Privacy Act*.
- All information discussed during the interview must be kept confidential, therefore, they are required to complete and sign a Non-Disclosure Agreement.
- Failure to maintain the confidentiality of the interview may result in disciplinary action.

The investigator must ensure that the interviewee clearly understands all of the above and be able to provide clarification and explanation if required.



(g) Confidentiality

While all components of a Professional Standards Investigation are confidential and the information gathered is protected, the information is also subject to the *Privacy Act* and the *Access to Information Act*.

Personal information revealed during an investigation that does not relate to the investigation must be discarded and cannot be discussed with anyone at any time.

(h) Questioning

The investigator will not provide their questions in advance of an interview.

The investigator will bring to the interview all relevant documents and other information.

The investigator will use various investigation techniques, including open-ended questions to ensure that the interviewee can provide their version of the facts. More specific, follow-up questions may be asked to clarify any response.

The investigator must seek clarification of any statement made by an interviewee when they respond with "I believe that..." or that may be the case..." to confirm facts and distinguish from the interviewee's impressions.

As needed, the investigator will confront the interviewee with documents or other information gathered without being threatening or intimidating.

During an interview, should the interviewee be reluctant to discuss a situation or relate the facts because they feel that doing so may incriminate them, they are to be informed that should they refuse to answer any questions, such will be noted in the investigation report and a decision regarding the investigation will be rendered by CBSA management without the benefit of their information or version of events.

(i) Documenting the Interview

The interviews of the respondent and witnesses will be audio-recorded and/or video recorded by the investigator. The investigator will also make hand-written notes during all interviews.

The investigator's notes must accurately reflect the information provided by the interviewee and must be complete, legible, easily understood, dated and placed in the investigation file.

Interviewees are not permitted to audio or video record the interview. Respondents may only take hand-written notes during their interview. Investigators will record the fact that a respondent has taken notes. Witnesses and observers will not be permitted to take notes.



All interviewees shall be allowed to review the investigator's hand-written notes to ensure accuracy and completeness. Thereafter, all interviewees shall be asked to date and sign the investigator's notes to confirm that the notes represent a complete written record of the interview.

If an interviewee refuses to sign the investigator's notes, the investigator shall record on the notes that the interviewee was provided the opportunity to review the notes, asked to sign the notes, but refused to do so.

When an interview is conducted by telephone, the investigator must record the date and time of the interview, as well as the name, title, address, and telephone number of the interviewee. The conversation may also be audio recorded by the investigator.

Following a telephone interview, the investigator will read their notes to the interviewee to confirm accuracy and completeness and the investigator will then sign each page of the notes.

(j) Refusal to cooperate

During an investigation, should an employee refuse to be interviewed or refuse to provide any required information, they are to be reminded of their obligation under the CBSA Code of Conduct and the *Policy on the Report, Review and Professional Standards Investigation of Alleged or Suspected Employee Misconduct*, to cooperate. Should the employee continue to refuse to cooperate, they are to be advised that such will be noted in the investigation report, will be reported to their Director or Director-General and may result in disciplinary action.

This also applies to any employee who counsels a respondent or witness to refuse to cooperate during an investigation.

(k) Criminal Investigation by Police

In cases of a criminal investigation by a police agency, the interviewee is to be advised that they may also be required to meet with the police investigator. Should they refuse to meet with the police investigator the interviewee is to be informed that the investigation will nonetheless proceed without the benefit of their participation.

If the respondent has a pending criminal court appearance that has already been set, and has been advised by their counsel to not participate with the administrative Professional Standards investigation, the investigator will consult with the Manager, Professional Standards Investigations to determine the way forward.

The situation will be assessed on its own merits as to whether the Professional Standards investigation will be held in abeyance pending the criminal proceedings, or whether the Professional Standards



Canada Border
Services Agency

Agence des services
frontaliers du Canada



investigation will proceed based solely on the information gathered to that point, without the benefit of the respondent's information.

The principles of procedural fairness will be considered to balance the obligation of the CBSA to conduct and complete the investigation without delay with the respondent's desire to be able to provide their version of the matter.

(I) The Report

The original report will be sent to the Director General or Regional Director General responsible for the respondent with a copy to the Director General of Labour Relations. If an allegation of misconduct is substantiated, management is solely responsible for determining the appropriate disciplinary response.

If the allegation(s) is founded, a copy also goes to the CBSA Access to Information and Privacy (ATIP) Division for vetting purposes prior to release to the respondent. The matter may also be referred to the Personnel Security Screening Section to conduct a review for cause which may result in the suspension or revocation of the employee's reliability status by the Departmental Security Officer.

3. Retention of Information

Document originals must be obtained. All copies or originals will have to be certified by the investigator. Documentation gathered for an investigation must be retained in accordance with the CBSA's Disposal and Retention Schedules. The documentation must be kept for at least five years after the case is officially closed or after the date of the last document placed on file. Records are also maintained in the Professional Standards Case Management (PSCM) system.

All files, documents, written notes, recordings, evidence, and supporting documents used during an investigation must be filed and retained in a secure location in accordance with the Policy on Government Security.

From a legal standpoint, strict control must be maintained over the storage of and access to this information. The evidence gathered during the investigation must be stored and handled in such a way as to prevent damage, to ensure that they are properly identified and can serve to subsequently prove the chain of evidence custody as required by legislation. The date, time, and origin must be indicated on exhibits. In most cases, exhibits serve to corroborate the testimony of witnesses.

Exhibits are also subject to the *Privacy Act* or *Access to Information Act*.



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Policy on the Report, Review and Professional Standards Investigation of Alleged or Suspected Employee Misconduct

1. Purpose & Objective

The purpose of this Policy is to provide a structured approach to the reporting, fact-finding, review and Professional Standards investigation of an allegation or suspicion of misconduct by an employee of the Canada Border Services Agency (CBSA).

The objective of this Policy is to ensure that any allegation or suspicion of employee misconduct is promptly reported to and reviewed by local CBSA management and, when appropriate, investigated by the Professional Standards Investigations Section of the Personnel Security and Professional Standards Division of the CBSA, and that any required corrective measures are promptly taken.

2. Effective Date

This Policy takes effect January 30, 2015, and replaces the Policy on Internal Investigations into Alleged or Suspected Employee misconduct dated October 29, 2007.

3. Application

This Policy is applicable to all CBSA employees, including management, trainees, recruits and students, whether indeterminate, term, casual, part-time or seconded or assigned to the CBSA, as well as CBSA employees on leave without pay [and contract and private agency personnel while under contract with the CBSA].

4. Authority

All CBSA employees must comply with all Canadian laws, Treasury Board Secretariat (TBS) policies and procedures, including the Values and Ethics Code for the Public Sector, and CBSA policies and procedures, including the CBSA Code of Conduct.

In accordance with the TBS Policy on Government Security, the CBSA must ensure that information, assets and services are safeguarded from compromise. All employees play an important role in ensuring that the CBSA fulfills each of these fundamental obligations.



Any allegation or suspicion of the breach of any of these obligations by an employee must be promptly reported and thoroughly reviewed. Prompt action is essential to, among other things:

- stop the misconduct;
- protect information, assets and resources from further compromise;
- preserve and secure relevant evidence; and
- uphold the professional reputation and image of the CBSA.

5. Definitions

Specific definitions drawn from authoritative sources are included in the [Glossary of Security Terminology](#).

In this Policy, **misconduct** means any conduct by a CBSA employee, either on or off duty, that

- (a) breaches any criminal law, TBS policy or procedure, including the Values and Ethics Code for the Public Sector, or CBSA policy or procedure, including the CBSA Code of Conduct, or
- (b) adversely affects the professional reputation or image of the CBSA in any manner.

Misconduct includes but is not limited to,

- unauthorized access to protected, confidential or sensitive information,
- the use or disclosure of protected, confidential or sensitive information without lawful authority,
- theft or loss of government revenue, including false claims for travel expenses, overtime, leave, relocation, etc.,
- providing preferential treatment to a CBSA client,
- accepting or seeking a benefit of any kind from a CBSA client whose dealing with the CBSA is associated to their function,
- destruction of government property, or
- any private or off-duty conduct that reflects negatively on the professional reputation or image of the CBSA.

6. Policy Administration & Enforcement

The Personnel Security and Professional Standards Division (PSPSD) is responsible for the administration and enforcement of this Policy and the Professional Standards Investigations Section of the PSPSD will liaise with CBSA management to ensure consistency in its application.



7. Roles and Responsibilities

CBSA employees are required to:

- at all times, comply with all Canadian and international laws, TBS policies and procedures, including the Values and Ethics Code for the Public Sector, and CBSA policies and procedures, including the CBSA Code of Conduct;
- promptly report to their immediate Supervisor or Manager, or to their Director (if the circumstances warrant) any allegation or suspicion of misconduct by an employee that they are aware of, or have witnessed;
- provide any requested information or report of a matter under review or Professional Standards investigation under this Policy;
- provide the necessary cooperation and assistance to local management and officials from the Personnel Security and Professional Standards Division (PSPSD) by attending any requested interview, answering truthfully and completely any question posed and facilitating access to any CBSA information system, document or record;
- upon request, sign the Non-Disclosure Agreement in the form set out in Appendix C to this Policy;
- not discuss any detail of any fact-finding, review or Professional Standards investigation under this Policy or share notes (only respondents will be permitted to take notes during an interview) with any person unless expressly authorized to do so by an official from the Professional Standards Investigations Section of the PSPSD; and
- not hinder a fact-finding, review or Professional Standards investigation under this Policy or a related police agency investigation in any manner.

Managers are required to promptly report any allegation or suspicion of misconduct by an employee or a security incident to their Director.

Directors are required to, and in accordance with the 2015 memorandum to all Directors General relating to the mandatory reporting of misconduct:

- promptly report any allegation or suspicion of misconduct by an employee or any security incident to the Manager, Security and Professional Standards Analysis Section of the PSPSD;
- ensure that a fact-finding and review of any allegation or suspicion of misconduct or security incident is undertaken in accordance with Appendix A, "Guidelines for Professional Standards Investigations" to this Policy; and
- if the matter is referred to the Professional Standards Investigation Section for investigation, inform the employee under investigation (the respondent) of this decision and of the allegations as soon as possible, and with guidance from Professional Standards



Investigations. The respondent will not be informed of the allegations if there is concern over the preservation of evidence, if an individual's safety could be in jeopardy, or if it could compromise the integrity of the Investigation

The Security and Professional Standards Analysis Section is required to:

- conduct a preliminary analysis of any allegation or suspicion of misconduct including any potential personnel security risks;
- record the matter in the Professional Standards Case Management System;
- liaise with local management and assist with their fact-finding (review);
- if appropriate, refer the matter to the Professional Standards Investigation Section for a possible Professional Standards investigation; and
- if appropriate, refer the matter to the Personnel Security Screening Section for a possible review for cause.

The Professional Standards Investigations Section is required to:

- confirm the allegations being investigated and whether a Professional Standards investigation is required and advise the respondent's Director of the decision;
- ensure that any Professional Standards investigation is conducted by qualified persons (investigators) in an objective, thorough and professional manner in accordance with Appendix A, "Guidelines for Professional Standards Investigations" and Appendix B, "Standard Operating Procedures for Conducting Professional Standards Investigations" to this Policy;
- ensure that any matter involving an allegation or suspicion of criminal misconduct by the respondent is reported to the appropriate police agency by an appropriate CBSA representative;
- provide the Director of the respondent with bi-weekly updates on the progress of the investigation and the issues uncovered; and
- provide the Director General of the respondent with the final report of the Professional Standards investigation.

Professional Standards Investigations Section Investigator is required to:

- plan and conduct the Professional Standards investigation in accordance with Appendix A, "Guidelines for Professional Standards Investigations" and Appendix B, "Standard Operating Procedures for Conducting Professional Standards Investigations" to this Policy;
- obtain all relevant information, including interviewing witnesses and the respondent;
- identify written and other sources of information and persons who can supplement or corroborate the available information;



- prepare a clear, accurate and comprehensive written report and provide a copy of this report to SPSP management for review and submission to the DG of the respondent;
- in the case of an alleged or suspected criminal misconduct by the respondent, liaise with the appropriate police agency and, if appropriate, with other outside law enforcement agencies.

8. Use of Observers while Attending the PSI Interview.

Employees may request that an observer be present during their interview with the Professional Standards Investigations Section Investigator.

The decision to permit a specific observer during an investigation remains the sole discretion of the Investigator. The Investigator may limit the number of interviews that a specific observer can attend during the same investigation.

An observer must be an employee of the CBSA, cannot be a witness in the current investigation and cannot attend the interview in the capacity of a union representative.

All observers must sign a non-disclosure agreement in the form set out in Appendix C to this policy; failing which they may not attend the interview. An observer is not permitted to take notes or record the interview in any manner, make statements during the interview or disrupt the interview in any manner; failing which, the observer will be told to leave the room.

9. Consequence of Misconduct

A respondent found to have committed misconduct will be subject to disciplinary measures by the Corporate Labour Relations and Compensation Directorate of the CBSA based on the seriousness of the misconduct and in accordance with the CBSA Discipline Policy.

In the case of criminal conduct, the appropriate police agency will determine whether criminal charges are appropriate, in which case the respondent will be subject to criminal prosecution and, if convicted, liable to fine and/or imprisonment.

10. General



Any fact-finding, review or Professional Standards investigation under this Policy, as well as any decision of the Departmental Security Officer to suspend or revoke the reliability status of a respondent, is separate and distinct from the disciplinary process of the Corporate Labour Relations and Compensation Directorate of the CBSA.

In accordance with the decision of the Public Service Labour Relations Board in *Thompson v Treasury Board (CBSA)* (2007), a fact-finding, management review or Professional Standards investigation, including the interview of the respondent by the investigator and any interview on behalf of the DSO in the review of an individual's reliability status screening, is not a "disciplinary hearing" as that term is used in the Collective Agreement applicable to the respondent.

11. Appendices

The following Appendices form part of this Policy:

- *Appendix A – Guidelines for Professional Standards Investigations;*
- *Appendix B – Standard Operating Procedures for Conducting Professional Standards Investigations;*
- *Appendix C - Non-Disclosure Agreement*

10. Enquiries

For more information, please contact:
Security and Professional Standards Directorate
Ottawa, Ontario K1A 0L8



PS _____

NON-DISCLOSURE AGREEMENT

Professional Standards Investigations

You are being interviewed, or are an observer, in part of an official Canada Border Services Agency (CBSA) Professional Standards Investigation. As this investigation is sensitive in nature, you are instructed not to discuss this interview with any other person(s), except where authorized by the Professional Standards Investigator.

Information collected during the course of this investigation is categorized as Protected B or higher and as per the Policy on Government Security only employees with the appropriate security screening level and a demonstrated need to know are allowed access to protected information.

Failure to comply with this directive may subject you to disciplinary action or suspension or revocation of your Personnel Security Screening or Clearance.

I, the undersigned, acknowledge that I have been advised of, understand and agree to comply with this directive.

Name of Employee (print)

Employee Signature

Date

Name of PSI Investigator (print)

PSI Investigator Signature

Date



Appendix A

Comptrollership Manual - Security Volume

Guidelines for Professional Standards Investigations

Table of Contents

1. Foreword
2. Definitions
3. Responsibilities
4. Fact-finding, Review, Professional Standards Investigation and Criminal Investigation
5. General
6. Access to Information
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1. Foreword

The Canada Border Services Agency (CBSA) must manage its programs and services to ensure that information, assets and services are safeguarded from compromise. Each employee plays an important role in ensuring that the CBSA fulfills each of these fundamental obligations.

In accordance with CBSA Code of Conduct, each CBSA employee is obligated to report to their manager or director any allegation or suspicion of misconduct by another employee that they have witnessed.

These Guidelines provide functional guidance for making the required report, as well as the steps local management and the Personnel Security and Professional Standards Division must take upon being advised of an allegation or suspicion of misconduct or a security incident.

2. Definitions

Specific definitions drawn from authoritative sources are included in the Glossary of Security Terminology.

3. Responsibilities

Employees are required to promptly advise their immediate Supervisor; Manager, or their Director (if the circumstances warrant) of any allegation or suspicion of misconduct by another employee that they are aware of, or have witnessed.

Managers are required to promptly advise their Director of any allegation or suspicion of misconduct or security incident brought to their attention.



Directors are required to

- a) immediately advise the Manager, Security and Professional Standards Analysis Section (SPSA) of the Personnel Security and Professional Standards Division (PSPSD) of any allegation or suspicion of misconduct,
- b) in consultation with the SPSA, ensure that a fact-finding is conducted in accordance with these Guidelines; and
- c) provide a copy of the fact-finding and any information produced during the fact-finding and the local management review to the SPSA within 20 days.

Directors need not report employee performance issues including, attendance, general rudeness, bad attitude, a work refusal or other similar performance management issues to the SPSA.

4. Fact-finding, Local Management Review and Professional Standards Investigation

4.1 Fact-finding

The purpose of the fact-finding is simply to gather and review information relevant to the complaint. It will include speaking with the complainant and the respondent, identifying and speaking with any witness and preserving and securing relevant documentation and other evidence.

The fact-finding will usually be undertaken by local management with the assistance of the Security and Professional Standards Analysis Section (SPSA), or it may be undertaken by the SPSA.

The SPSA will:

- conduct a preliminary analysis of the complaint, including any personnel security risk;
- if appropriate, conduct the fact-finding;
- record the complaint and its preliminary analysis in the Professional Standards Case Management System;
- liaise with local management and assist with the fact-finding;
- if required, conduct CBSA Outlook and other relevant CBSA system audits or an internet review; and
- if appropriate, refer the matter to the Professional Standards Investigations Section for a possible Professional Standards investigation;
- if appropriate, refer the matter to the Personnel Security Screening Section for a possible review for cause.

4.2 Local Management Review

The purpose of a local management review is to review the fact-finding and determine whether the information gathered supports the complaint.

If the fact-finding supports the complaint, local management will engage SPSA to confirm whether the matter should be referred to the Professional Standards Investigations Section.

If the fact-finding does not support the complaint, local management will confirm whether further information and evidence gathering and analysis are required.



A written report of the local management review is to be made and a copy provided to the SPSA within 20 days.

The local management review is separate and distinct from and does not form part of the Professional Standards investigation process.

4.3 Professional Standards Investigation

A Professional Standards investigation may be undertaken at any time following the receipt of a complaint, including before a fact-finding or local management review under these *Guidelines* if the complaint is of a serious nature (as outlined in the definition of misconduct herein) and/or its scope warrants investigation by persons trained in investigative techniques.

The scope of a Professional Standards investigation is entirely fact-specific.

In accordance with the *Standard Operating Procedures for Conducting a Professional Standards Investigation*, the investigator will gather all information and evidence relevant to the complaint, including interviewing any witness and the respondent.

Following all interviews and information gathering, the investigator will prepare a formal written report and analysis that, on a balance of probabilities, will conclude whether or not misconduct occurred. During the investigation, the investigator will keep management apprised of the progress and the issues uncovered.

The Director General of the Security and Professional Standards Directorate will provide a copy of the report to the employee's RDG or DG and to the DG of Corporate Labour Relations and Compensation, and a version of the report that has been vetted by the Access to Information and Privacy (ATIP) Division will be provided to the respondent.

If the Professional Standards investigation reveals criminal or illegal conduct, the matter will be referred to the appropriate police agency to determine whether a formal criminal investigation is warranted.

4.4 Criminal Investigations

When a complaint is referred to a police agency, the Professional Standards Investigations Section will monitor the matter and liaise with the police agency.

The police agency is solely responsible for the decision to formally investigate the matter and the decision to lay criminal charges. Thereafter, the Attorney-General for Canada or the province as the case may be is solely responsible for the conduct of the criminal prosecution.

A formal police investigation is separate and distinct from a Professional Standards investigation.

5. General

The fact-finding, local management review and Professional Standards investigation are separate and distinct from the disciplinary process of the Corporate Labour Relations and Compensation Directorate of the CBSA and are not "disciplinary hearings" under the Collective Agreement.

Neither union representation nor legal representation is permitted to participate in any manner during the fact-finding, local management review or Professional Standards investigation.



An observer may be present during an interview; however, the decision to permit a specific observer remains the sole discretion of the Investigator. The Investigator may limit the number of interviews that a specific observer can attend in the same investigation. An observer must be an employee of the CBSA and cannot be a witness in the current investigation and cannot attend the interview in the capacity of a union representative. All observers must sign a non-disclosure agreement; failing which they may not attend the interview. An observer is not permitted to take notes or record the interview in any manner, make statements during the interview or disrupt the interview in any manner; failing which, the observer will be told to leave the room.

6. Access to Information

Any person, including a respondent or witness, seeking to receive information obtained or produced during a fact-finding, local management review or Professional Standards investigation must make a formal request under the *Privacy Act* or the *Access to Information Act*.

Information collected or produced during a fact-finding, local management review or Professional Standards investigation will only be disclosed in strict accordance with the *Access to Information Act* and the *Privacy Act*.

A respondent who takes notes during or after an interview with an investigator is required to safeguard those notes and not share them with any other person. Employee notes are subject to *Access to Information Act* and *Privacy Act* requirements and must be made available in response to a formal request under the *Privacy Act* or the *Access to Information Act*. Witnesses will not be permitted to take notes.

7. Report and Enquiries

To report an allegation or suspicion of misconduct, please contact:

Manager, Security and Professional Standards Analysis Section
Manager, Professional Standards Investigations Section
Director, Personnel Security and Professional Standards Division

For more information, please contact:

Security and Professional Standards Directorate